

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 12TH DAY OF MAY 2020 / 22ND VAISAKHA, 1942

BA NO.2722 OF 2020

(Crime No: 125 of 2020 of Pallithottam Police Station, Kollam District)

Petitioner/ Accused

Shyam Lal S/O. Muraleedharan ,45 aged Years, Residing at Deepthi, Nambarath cherry, Thrikadavur P.O, Thrikadavur Village, Kollam Taluk, Kollam District. Pincode-691601

By Adv Sri. B.Dipu Sach Dev & Arun Babu

Respondent/ Complainant

1. State of Kerala represented by the Public prosecutor, high court of Kerala Pincode-682031.
2. Inspector of Police cum S.H.O, Pallithottam Police Station, Pallithottam P.O. Kollam City, Sub Division, Kollam city, Kollam District .Pincode-691006
3. Sub Inspector of Police, Pallithottam Police Station, Pallithottam P.O. Kollam City, Sub Division, Kollam city, Kollam District .Pincode-691006

By P.P. Sri.Ajith Murali & Santhosh Peter(Sr)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 12.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J**

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B.A.No.2722 of 2020  
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Dated this the 12<sup>th</sup> day of May, 2020

**O R D E R**

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the accused in Crime No.125 of 2020 of Pallithottam Police Station registered alleging offences punishable under Sections 376AB, 376(f)(i), (n), 354A(4), 506(ii) of Indian Penal Code and 3(b), 4, 5(1), 5(m), 5(n) 7&8, 9(1), 9(m), 9(n), 10, 11(III), 11(IV) of POCSO Act 2012 and read with Section 75 of JJ Act.

3. The allegation against the petitioner is that, he sexually abused his own daughters. According to the

prosecution, from December, 2015 onwards the petitioner threatened his own elder daughter with a knife to her neck and sexually abused her. Thereafter, the petitioner sexually assaulted his younger daughter. This is the admitted prosecution case.

4. The counsel for the petitioner submitted that there is no criminal antecedents to the petitioner and he is ready to abide any conditions if this court grant bail. He also submitted that the alleged incident happened from 2015 onwards and the complaint was filed only in 2020.

5.The learned Public Prosecutor seriously opposed the bail application. He submitted that the petitioner sexually abused his own daughters. He is not entitled any sympathy from this court. He submitted that the petitioner should face trial in custody in the facts and circumstance of this case.

6. I think the submissions of the learned Public Prosecutor is correct. The allegation is that the petitioner abused his own daughters. Further allegation is that, he sexually abused the minor daughters by threatening with a knife to their neck. The allegations are very serious. In such a situation, this is not a fit case in which the bail application can be allowed.

7. Moreover, the jurisdiction to grant bail has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in **Chidambaram P v Central Bureau of Investigation (AIR 2019 SC 5272)**. The apex court held that, the following factors are to be taken into consideration while considering the application for bail.

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials

relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

It is true that there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be decided on the basis of the facts and circumstances of that case. In the light of the general

principles laid down in the above judgment and considering the facts and circumstances of this case, I am of the opinion that this is not a fit case in which the petitioner can be released on bail. Hence this Bail Application is dismissed.

**P.V.KUNHIKRISHNAN,**

**JUDGE**

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