

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 15TH DAY OF MAY 2020 / 25TH VAISAKHA, 1942

BA NO.2759 OF 2020

(Crime No.637 of 2019 of the Mala Police Station pending as CP.109 of 2019 before the JFCM, No.I, Chalakudy, Thrissur District)

Petitioner/1st Accused :-

Geethu @ Anooja @ Kavya, aged 33, W/o.Aneeshkumar, Vazheliparambil House, Annamannada P.O., Kallur Thekkumuri Village, Chalakudy Taluk, Thrissur District

Adv.Bitto.N.L.

Respondent/State of Kerala:-

1. The State of Kerala, rep. by the Public Prosecutor High court of Kerala at Ernakulam.
2. Sub Inspector of Police, Mala Police Station, Mala.P.O., Chalakudy Taluk, Thrissur District.

By P.P. Sri.B.JAYASURYA (SR) & C.K.PRASAD

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 15.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No. 2759 of 2020

Dated this the 15th 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 2nd accused in Crime No. 637 of 2019 of Mala Police Station. The above case is registered against the petitioner and others alleging offences punishable under Sections 376, 376D, 120 (b) of IPC. Now the final report is filed and the case is pending as C.P.No.109/2019 before the Judicial First Class Magistrate Court-I, Chalakudy.

3. The prosecution case is that, from 2018 onwards, the 1st accused threatened the victim girl and 1st accused raped her with the connivance of the 2nd accused. It is the further case of the prosecution that, she introduced the victim to different persons and they also committed rape on her.

4. The counsel for the petitioner submitted that, some of the accused were already released on bail. The petitioner has

no serious involvement in this case and she is ready to abide any conditions, if this Court grant bail to her.

5. The learned Public Prosecutor submitted that, the petitioner has serious involvement in this case and the petitioner is a lady and she was doing business using the victim.

6. After hearing both sides, according to me, I am not in a position to allow this bail application. The bail application of the petitioner was considered by this Court in B.A.No.1786/2020.This Court vide order dated 23.03.2020 dismissed the bail application with following observations:

"7. Having regard to the prima facie case, the nature and gravity of the accusation, severity of the punishment in the event of conviction, character and behaviour of the accused, likelihood of the offences being repeated, the chances of witnesses being influence and having regard to the larger public interest, I am of the view that the petitioner is not entitled to be enlarged on bail at this stage."

No change of circumstances is point out by the counsel for the petitioner after the above order. The only change of circumstances pointed out by the counsel for the petitioner is

that the other accused is released on bail. That is not a reason to allow this bail application, especially in the light of the findings of this Court, which is extracted above. Considering the facts and circumstances of this case, I am not in a position to allow this bail application.

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

VPK