

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.2781 OF 2020

(CRIME NO. 253/2020 OF KATTOOR POLICE STATION, THRISSUR  
DISTRICT)

PETITIONER/ACCUSED:-

SEBASTIAN SHALWIN D'SILVA, AGED 24 YEARS  
S/O. JOVAI D'SILVA  
CHETTIVALAPPIL HOUSE, PADIYOOR P.O.  
MUKUNDAPURAM TALUK, THRISSUR DISTRICT, PIN - 680 703

BY ADV.SRI. K.I. ABDUL RASHEED

RESPONDENTS/ COMPLAINANTS:-

1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.
2. SUB INSPECTOR OF POLICE, KATTOOR POLICE STATION,  
KATTOOR, THRISSUR DISTRICT, PIN - 680 702.

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:

B.A.No. 2781 of 2020

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**P.V.KUNHIKRISHNAN, J**

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B.A.No. 2781 of 2020  
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Dated this the 15<sup>th</sup> day of May, 2020

**ORDER**

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

2. Petitioner is the sole accused in Crime No. 253 of 2020 of Kattoor Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 363 and 376 of IPC and Sections 3, 4, 7 and 8 of the Protection of Children from Sexual Offences act, 2012.

3.The prosecution case is that the petitioner enticed and took away the 15 year old victim from her residence at Kongadanthuruth, in a motor cycle to his house and committed rape on her. The petitioner was arrested on

03.04.2020.

4. The counsel for the petitioner submitted that, the petitioner is aged 24 years and the minor girl is aged 15 years. There is no criminal antecedent against the petitioner. The counsel for the petitioner also submitted that they are in love affair and the incident is not happened as alleged by the prosecution.

5.The learned Public Prosecutor submitted that, the house of the minor girl and the house of the petitioner is situated adjacent and if this Court is granting bail, stringent conditions may be imposed. The Public Prosecutor also submitted that, the petitioner committed rape on the minor child.

6. Considering the facts and circumstances, I think this Bail Application can be granted on stringent conditions. The admitted prosecution case is that the victim went along with the petitioner in his motor cycle to

the house of the petitioner. It is the further case of the prosecution that, from the house of the petitioner, the petitioner committed rape on the victim. It is true that the victim is a minor girl. But the counsel for the petitioner submitted that the petitioner and the victim were in love and that is a matter to be investigated and decided at the time of trial. Considering the facts and circumstances of this case and considering the fact that the petitioner is in custody from 03.04.2020 onwards, I think this Bail Application can be allowed.

7. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the Hon'ble Supreme Court in **Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition(C) No.1 of 2020)** and a Full Bench of this Court in **W.P(C)No.9400 of 2020** issued various salutary directions for minimizing

the number of inmates inside prisons.

8. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in **Chidambaram. P v Directorate of Enforcement (2019 (16) SCALE 870)**, after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

9. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The Superintendent of Jail concerned where the petitioner is incarcerated is directed to release the

petitioner on bail on executing a self bond ensuring that he will appear before the Court concerned as and when required, if he is not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioner as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone number and the address at which the petitioner would be residing after his release.

3. The Superintendent of Jail concerned, immediately after release of the petitioner will forthwith forward the bail bond obtained from the petitioner to

the jurisdictional Court.

4. The petitioner immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish his phone number and the place where he is going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioner and shall ensure that the petitioner do not violate the terms of the undertaking.

5. The petitioner shall appear before the Investigating Officer as and when required. The petitioner shall co-operate with the investigation and shall not threaten or attempt to influence the

witnesses or tamper with the evidence.

6. The petitioner shall within one week from the commencement of the functioning of the jurisdictional court, if the court is not functioning at present, execute a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

7. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing and other directions in the wake of declared lock-down.

8. If any of the above conditions are violated by the petitioner, the



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jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

**P.V.KUNHIKRISHNAN, JUDGE**

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