

B.A No.33 of 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.S. DIAS

TUESDAY, THE 21ST DAY OF APRIL 2020/1st Vaisakha 1942

B.A No.33 of 2020

(Crime No.51/2020 of Agali Police Station, Palakkad Dist)

PETITIONER/Accused:

Ganesan, Aged 30 years, S/o.Attuchamy,
Puthur, Agali, Mannarkkad, Palakkad.

By Adv.T.K.Sandeep

RESPONDENT/Complainant & State

State of Kerala, represented by the Public
Prosecutor, High Court of Kerala, Ernakulam-31.

By Public Prosecutor Sri.Amjad Ali

THIS B.A. HAVING BEEN FINALLY HEARD ON 21.04.2020, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

This is an application filed under Section 439 of the Code of Criminal Procedure.

2. The petitioner is the accused in Crime No.51 of 2020 of the Agali Police Station. The petitioner is alleged to have committed the offences punishable under Sections 323, 324, 363, 376(2)(j) and 376(2)(n) of the Indian Penal Code.

3. The prosecution case, in brief, is that: the petitioner, who is the mother's sister's husband of the victim, had on 23.3.2020 abducted the victim and committed rape on her. Thus, the petitioner has committed the above offences.

4. The petitioner was arrested on 27.3.2020. His application for bail was dismissed by the Judicial First Class Magistrate, Mannarkkad by order dated 28.3.2020 in C.M.P. No.1013 of 2020.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor via video-conferencing.

6. The learned counsel for the petitioner argued that the petitioner and the victim are close relatives. It is out of a family

dispute that the victim lodged the frivolous complaint. There is no truth in the allegations levelled. The petitioner is in custody since 27.3.2020. Investigation the case is practically completed. No purpose will be served in the continuous incarceration of the petitioner.

7. When the above application came up for hearing on 17.4.2020, the learned counsel for petitioner submitted that dispute between the petitioner and the victim has been settled and accordingly, I had instructed the learned Public Prosecutor to get specific instruction through the Investigating Officer, as to whether there is truth in the above submission.

8. The learned Public Prosecutor, today, on instructions submitted that a fresh statement of the victim was recorded, and she has stated that the subject matter in dispute between the victim and the petitioner has been settled and that she has no subsisting grievance. She does not want to proceed with the matter any further.

9. The Hon'ble Supreme Court in ***Sanjay Chandra v. CBI*** [2012 (1) SCC 40] held as follows:

"27. This Court, time and again, has stated that bail is the rule

and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution".

10. Recently, the Honourable Supreme Court in ***Nikesh Tarachand Shah v. Union of India*** [2018 (11) SCC 1] after going back to the days of the Magna Carta and after referring to Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565] has reiterated the same view in ***Sanjay Chandra v. CBI (supra)***. Again, in ***P.Chidamabram v. Directorate of Enforcement*** [(2019) SCC Online SC 1549] the above proposition has been fortified.

11. After the outbreak of the Novel Corona Virus (COVID -19) pandemic in the country, the Hon'ble Supreme Court in In Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition (C) No.1 of 2020) observed that the issue of overcrowding of prisons is a matter of serious concern. The State Governments were directed to take adequate measures to de-congest the prisons. Following the above direction, the Home Department, Government of Kerala has promulgated order dated 25.03.2020, *inter alia*, directing the release of under-trial prisoners alleged to have committed offences punishable

with punishment for seven years or less. Later, a Full Bench of this Court by order dated 25.03.20202 in W.P.(C) No.9400 of 2020 (Suo Motu), has issued directions to de-congest the prisons in the State, keeping in mind the proposition that bail is the rule and jail is the exception.

12. Having regard to the facts and circumstances, particularly the fact that that the petitioner has been in judicial custody since 27.3.2020, that the investigation is almost complete and that the victim has no subsisting grievance against the petitioner and also the legal proposition laid down by the Honourable Supreme Court while granting bail; and the directions to decongest prisons in view of Covid-19 pandemic, I am inclined to allow this bail application.

13. In the result this bail application is allowed, on the following conditions:-

(i) Due to the present National lock-down and the closure of Courts, the Jail Superintendent, where the petitioner is incarcerated, is directed to release the petitioner on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed

sureties/immediate relatives. The petitioner shall also file an undertaking to the Jail Superintendent that he and his sureties will execute the bail bond before the jurisdictional Court within one week of its re-opening. The Jail Superintendent after ensuring the compliance of the above conditions, shall release the petitioner to the Station House Officer of the Police Station where the crime has been registered, who shall after noting down the above details, release the petitioner. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioner.

(ii) The petitioner shall within one week from the re-opening of the jurisdictional Court, if not already re-opened, execute a bond for a sum of Rs.50,000/- (Rupees fifteen thousand only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioner shall appear before the Investigating Officer on all Saturdays between 10.00 a.m and 11 a.m till final report is filed.

(iv) The petitioner shall not tamper with the evidence or

influence the witnesses in the case, in any manner, whatsoever.

(v) The petitioner shall not commit any offence while on bail.

(vi) The petitioner shall not leave the State of Kerala without the permission of the jurisdictional court.

(vii) Needless to mention that, if the petitioner violates any of the above conditions, the Station House Officer shall be at liberty to approach the jurisdictional Court and file appropriate application seeking for cancellation of the bail.

C.S.DIAS, JUDGE