

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 29TH DAY OF APRIL, 2020/9TH VAISAKHA, 1942

B.A NO.1337 OF 2020

CRIME NO.637 OF MALA POLICE STATION COMING WITHIN THE
JURISDICTION OF JFCM NO.1, CHALAKUDY, THRISSUR DISTRICT

Petitioner/ 23rd Accused:-

JESHIN RAJ@ ANEESH, AGED 33,
S/O.RAJAN, *KEEZHUPIILY HOUSE, PONMANIKKODAM DESOM,
PERINJANAM VILLAGE, KODUNGALLUR TALUK, THRISSUR
DISTRICT.

*PALAKKAL HOUSE, THANISSERY DESOM, MANAVALASSERY
VILLAGE, THRISSUR DISTRICT

Address of the petitioner is corrected as per order dated
29.4.2020 in CrI.M.A No..../2020

Respondents/Complainant/State:

THE STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

BY PUBLIC PROSECUTOR SRI.E.C. BINEESH

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
29.04.2020, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

C.S. DIAS, J

Crl. M.A.No... of 2020

in

B.A. (Temp) No.1337 of 2020

Dated this the 29th day of April, 2020

ORDER

The application filed by the petitioner for correction, is allowed.

Registry is directed to show the address of the petitioner (23rd accused in Crime No.637 of 2019 of the Mala Police Station) as shown in Annexure A1 order.

C.S.DIAS, JUDGE

sou.

ORDER

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

2. The petitioner is the 23rd accused in Crime No.637 of 2019 of the Mala Police Station. The petitioner along with other accused are alleged to have committed the offences punishable under Sections 370, 376, 376(D), 120(b) of Indian Penal Code and Section 3(1), (2)a, b of the Immoral Traffic Prevention Act.

3. The prosecution case, in brief, is that: the accused had committed rape on the victim. Thereafter, the victim was taken to different places, and several other persons committed rape on her. Thus, the petitioner and other accused have committed the above offence.

4. The petitioner was arrested on 26.1.2020. His application for bail was dismissed by the Judicial First Class Magistrate Court, Chalakkudy, by order dated 30.1.2020.

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 is absolutely innocent of the accusations levelled against him. The petitioner is in detention since 26.1.2020, which is now 93 days. The petitioner is entitled for statutory bail as provided under Section 167(2) of Cr.P.C., as the final report has not been filed till date. Hence, the petitioner may be enlarged on bail.

7. The learned Public Prosecutor concedes to the fact that the petitioner is in detention for the last 93 days, and that final report has not been filed in the above case.

8. 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".

9. 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.

10. Having regard to the facts and circumstances of the case, particularly the fact that the petitioner is in custody for the last 93 days, and that final report has not been filed, the petitioner is entitled for statutory bail as provided under Section 167(2) of Cr.P.C.

12. 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 Fifty 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

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