

BAIL APPL.NO. TMP 167 OF 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 28TH DAY OF APRIL, 2020 /8TH VAISAKHA, 1942

BAIL APPL.NO. TMP 167 OF 2020

CRIME NO 61/2020 OF BATHERI POLICE STATION,

WAYANAD DISTRICT

PETITIONER/ACCUSED:

SHRI. SREENISH, AGED 24 YEARS,
S/O. SREEDHARAN,
KIDANGIL COLONY,
KIPPADI, BATHERY
WAYANAD DISTRICT.

BY ADV. SRI. T.G. RAJENDRAN

RESPONDENTS/COMPLAINANT:

1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682031.
2. THE SUB INSPECTOR OF POLICE,
BATHERI POLICE STATION,
WAYANAD DISTRICT-673 592

BY PUBLIC PROSECUTOR SRI.**BINEESH E.C.**

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
28.04.2020, 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.61 of 2020 of the Bathery Police Station. The petitioner is alleged to have committed the offences punishable under Section 376 (2) (n) of the Indian Penal Code.

3. The prosecution case, in brief, is that: in the 1st week of May, 2019, the petitioner took the de facto complainant from her house for a flower show. Thereafter, he committed rape on the de facto complainant in a coffee plantation. Subsequently, in the 1st week of November, 2019 also, he again raped the victim. He made the victim believe that he would marry her. Thus, the petitioner has committed the above offence.

4. The petitioner was arrested on 12.03.2020. His applications for bail were rejected by the Judicial First Class Magistrate's Court -I, Sulthan Bathery as per order dated

17.03.2020 in CMP No.2014 of 2020 and by the Sessions Court, Kalpetta, by order dated 02.04.2020 in Crl.M.C.No.193 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 is absolutely innocent of the accusations levelled against him. The victim is an educated lady and she is a divorcee. The petitioner is a coolie worker and he is the sole bread winner of his family. The petitioner has been in detention for last 47 days. The investigation in the case is practically completed. Hence, the petitioner may be enlarged on bail.

7. The learned Public Prosecutor opposed the application.

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. 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 25.03.2020 in W.P.(C) No.9400 of 2020 (Suo Motu), has issued directions to decongest the prisons in the State, keeping in mind the proposition that bail is the rule and jail is the exception.

11. Having regard to the facts and circumstances of the case, particularly the fact that the petitioner has been in incarceration for the last 47 days; that the investigation in the case is complete; that the petitioner's continued detention is unnecessary; the legal proposition laid down by the Honourable Supreme Court in the afore cited decisions; and the directions of the Hon'ble Supreme Court and a Full Bench of this Court to decongest prisons in view of Covid-19 pandemic, I am inclined to allow this bail application.

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

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jurisdictional Court and file appropriate application
seeking for cancellation of the bail.

C.S.DIAS, JUDGE

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