

**IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT**

**THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN**

**WEDNESDAY, THE 06TH DAY OF MAY 2020 / 16TH VAISAKHA, 1942**

**B.A.TMP NO.169 OF 2020**

Crime No. 720/2020 of Ochira Police Station, Kollam City

**Petitioner/Accused No1:**

Mujeeb Rahman, aged 43 years,  
S/o. Abdulkarim,  
Chavadiyil, Thamarakulam P.O,  
Alappuzha- 690530

By Advocate P Maya

**Respondent/Complainant:**

State of Kerala, represented by  
Public Prosecutor,  
High Court of Kerala, Ernakulam-682031

**BY P.P.SRI.AJITH MURALI & SANTHOSH PETER(SR)**

**THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 06.05.2020,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**P.V.KUNHIKRISHNAN, J**

-----  
B.A.TMP.No.169 of 2020  
-----

Dated this the 6<sup>th</sup> day of May, 2020

**O R D E R**

This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the 1<sup>st</sup> accused in Crime No.720 of 2020 of Police Station registered alleging offences punishable under Sections 376, 420, 409, 509 and 506 r/w 34 of Indian Penal Code.

3.The prosecution case is that the petitioner, a lawyer with an intention to have sexual intercourse with the defacto complainant, who is his client, went to the house of the defacto complainant at Njakkanal on a day between 17<sup>th</sup> and 24<sup>th</sup> of February, 2019 at about 11 am and committed rape on the defacto complainant. It is also alleged that the petitioner took nude photos of the defacto complainant in his mobile phone and thereafter threatened that he will circulate those photos in the social media. It is the case of the prosecution that the defacto complainant consented for sexual intercourse on condition that the petitioner will marry her.

4. The defacto complainant appeared through a counsel. The counsel for the defacto complainant submitted that the allegations are very serious. The petitioner threatened the defacto complainant that the nude photographs are with him and he will misuse it. It is also alleged that there are other cases also registered against the petitioner. He also submitted that the petitioner is not a lawyer and a businessman.

5. The learned Public Prosecutor submitted that the prosecution wants mobile phone in which the nude photographs is taken by the petitioner and once he is ready to produce the mobile phone and based on the same, if this Court grant bail to the petitioner, stringent conditions may be imposed.

6. After hearing both sides and considering the submission of the learned Public Prosecutor, I think that this bail application can be granted on stringent conditions. Of course, I am aware of the fact that there is a serious objection from the learned counsel for the defacto complainant. But his main grievance is about the possession of the photographs of the victim by the petitioner. The petitioner and the victim are aged about 46 years. A reading of the prosecution case itself will show that, there is an element of consent in the case. Of course, this is a matter to be decided at the trial. I

reiterate that, I made this observation only for considering this bail application at this stage. As far as the grievance of the defacto complainant that the nude photographs will be circulated by the petitioner can be prevented by giving a direction to the petitioner to produce the mobile phone in which he took the photographs of the defacto complainant.

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 petitioner shall appear before the Investigating Officer within ten days from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose to arrest the petitioner, he shall be released on bail executing a bond for a sum of Rs,.50,000/-(Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the officer concerned.

3. 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.

4. The petitioner will produce the mobile phone in which the photographs of the victim is alleged to have been taken.

5. The petitioner will surrender his passport before the investigating officer at the time of surrender.

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

7. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court.

**P.V.KUNHIKRISHNAN  
JUDGE**

ab