

BAIL APPL.TMP NO.176 of 2020

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.TMP NO.176 of 2020

CRIME NO 196/2020 OF VATAKARA POLICE STATION,

KOZHIKODE (RURAL) DISTRICT

PETITIONER/ACCUSED:

SHRI. RAMACHANDRAN K K AGED 53 YEARS
S/O KANNAN, KOLLIYODIKUNIYIL HOUSE
VYKKILASSERY, VATAKARA-PO
KOZHIKODE DISTRICT

BY ADV. P. VENUGOPAL

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM PIN: 682 031
- 2 STATION HOUSE OFFICER
VATAKARA POLICE STATION, VATAKARA
KOZHIKODE DISTRICT. PIN:673 101

BY PUBLIC PROSECUTOR SMT.PUSHPALATHA M.K.

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.196 of 2020 of the Vadakara Police Station. The petitioner is alleged to have committed the offences punishable under Sections 377 of Indian Penal Code and Sections 5(I)(m) read with Sections 6 and 11 (iii) read with Section 12 of the Protection of Children from Sexual Offences Act.

3. The prosecution case, in brief, is that: The petitioner had in the year 2019, showed obscene videos on his mobile phone to the victim, a minor boy aged 10 years, and committed aggravated penetrative sexual assault and had sexually harassed the victim. Thus, the petitioner has committed the above offences.

4. The petitioner was arrested on 17.2.2020. His application for bail was dismissed by the Additional Sessions Court for Trial of Cases Relating to Atrocities and Sexual Violence Towards Women and Children, Kozhikode, by order dated 5.3.2020 in CrI.M.C No.100 of

2020. Subsequently, though the petitioner filed B.A. No.2007 of 2020 before this Court, the same was dismissed as withdrawn on 19.3.2020.

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 innocent of the accusations alleged against him. The petitioner has been in judicial custody for the last 72 days. The investigation in the case is practically complete. Petitioner's continued detention in jail is unnecessary. Hence, the petitioner may be released on bail.

7. The learned Public Prosecutor opposed the bail 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 de-congest 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 72 days; that the investigation in the case is practically complete; that the petitioner's continued detention in prison is unnecessary; the legal proposition laid down by the Honourable Supreme Court in the afore cited decisions and also the directions of the Hon'ble Supreme Court and also 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 Tuesdays and Saturdays between 10.00 a.m and 11 a.m till final report is filed.

(iv)The petitioner shall not enter the jurisdictional limits of Chorode Grama Panchayat for a period of four months.

(v) The petitioner shall not tamper with the evidence or influence the witnesses in the case, in any manner, whatsoever.

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

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

(viii) 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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