

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 05TH DAY OF MAY 2020 / 15TH VAISAKHA, 1942

BA TMP.NO.186 OF 2020

(Crime No. 67 of 2020 of Amabalathara Police Station, Kasaragod District)

Petitioner/Accused:

Jose M.K @ Joseph, aged 62 years,
S/o. Kuriakose, Residing at Marottikuzhiyil House,
Odayanjil , Padimaruth P.O, Belur Village
Vellarikund Taluk, Kasaragod District.

By Adv. Jackson Johny

Respondent / State & Complainant

1. State – Represented by Public Prosecutor,
High Court of Kerala, Ernakulam - 682031.
2. The Station House Officer,
(Cr.No. 67 of 2020 of
Amabalathara Police Station)
Kasaragod District - 671531.

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

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 05.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.TMP No.186 of 2020

Dated this the 5th day of May, 2020

O R D E R

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the accused in Crime No.67 of 2020 of Ambalathara Police Station, Kasaragod District registered alleging offences punishable under Section 376 of IPC and Section 3(2)(v), 3(2)(Va) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short, SC/ST (POA) Act). Petitioner was arrested on 18.4.2020 and he is in custody.

3.The prosecution case is that the accused sexually abused the victim and the further case of the prosecution is that the victim belongs to Scheduled

Caste community.

4. The counsel for the petitioner submitted that the petitioner has not committed the offence. He submitted that the petitioner is ready to abide any conditions if this court grant bail.

6. After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. The offence alleged against the petitioner is heinous crime. The allegation is that he committed the offence under the provisions of SC/ST (POA) Act also. The petitioner was arrested only on 18.4.2020. The investigation of the case is progressing. Taking into consideration the nature of accusation and severity of the punishment in the case of conviction in this case, I think bail cannot be granted at this stage.

7. Moreover, the jurisdiction to grant bail has to be exercised on the well settled principles laid down by

the Hon'ble Supreme Court in **Chidambaram P v Central Bureau of Investigation (AIR 2019 SC 5272)** the following factors are to be taken into consideration while considering the application for bail.

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

It is true that there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be decided on the basis of the facts and circumstances of that case. In the light of the general principles laid down in the above judgment and considering the facts and circumstances of this case, I am of the opinion that this is not a fit case in which the petitioner can be released on bail. Hence this Bail Application is dismissed.

P.V.KUNHIKRISHNAN,

JUDGE

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