

BA TMP 201 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.NO.TMP 201 OF 2020

CRIME NO 62/2020 OF VAZHIKADAVU POLICE STATION,

MALAPPURAM DISTRICT

PETITIONER/ACCUSED:

SHRI.JALEEL AGED 42 YEARS,
S/O MOHAMMED
MANHAKANDAN VEEDU, PALLIPPADI
PALEMADU-PO, EDAKKARA AMSOM
NILAMBUR TALUK MALAPPURAM DISTRICT

BY ADV. P VENOGOPAL

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM PIN: 682 031
- 2 STATION HOUSE OFFICER
VAZHIKADAVU POLICE STATION, VAZHIKADAVU
MALAPPURAM DISTRICT. PIN:679 333

BY PUBLIC PROSECUTOR SRI.AJITH MURALI

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 first accused in Crime No.62/2020 of Vazhikadavu Police Station. The petitioner is alleged to have committed the offences punishable under Secs. 451, 354, 354A(i)(ii)(iv), 354D(i) read with Sec.34 of the Indian Penal Code and Secs 10 read with 9(l), 12 read with 11(i), 17 read with 16 of the PoCSO Act and Sec.75 of the JJ Act.

3. The prosecution case, in brief, is that: during the period between 25.12.2019 and 16.2.2020, the petitioner trespassed into the house of the victim, a minor 16 years old girl, outraged her modesty, committed aggravated sexual assault and harrassed the victim. The second accused, the mother of the victim, abetted the petitioner to commit the above offences.

4. The petitioner was arrested on 19.2.2020. His application for bail was dismissed by the Special Court for the trial of offences against Children (Additional Sessions

Court-I) Manjeri, by its order dated 24.4.2020 in CrI M.C No.89/2020.

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 above crime is falsely foisted against the petitioner. The petitioner has been in custody for the last 70 days. The petitioner is entitled for the benefit under Sec.167(2) of the Code of Criminal Procedure. Hence, the petitioner may be enlarged on bail.

7. The learned Public Prosecutor opposed the application. The learned Public Prosecutor submitted that due to the Covid-19 pandemic, the Police is unable to conduct the statutory tests contemplated under law. The petitioner, even if granted bail, may be only on stringent conditions, i.e, the petitioner may not be permitted to enter the jurisdictional limits of Vazhikadavu Police station till the final report is filed.

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 70 days; that the petitioner is entitled to statutory bail under Sec.167(2) of the Code of Criminal Procedure; that the petitioner's continued detention is unnecessary; the legal proposition laid down by the Honourable Supreme Court in the aforesaid decisions; 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 enter the jurisdictional limits of the Vazhikadavu Police Station till the final report is filed.

(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

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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

sks/28.4.2020