

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.207 OF 2020

(Crime No.108/2020 of Nenmara Police Station, Palakkad Dist)

PETITIONER/Accused:

Vanamohanan, Aged 43 years, S/o.Kittu,
Pulikkalchiara House,
Ayilur, Palakkad.

By Adv.T.K.Sandeep

Vs.

RESPONDENT/Complainant & State

State of Kerala, represented by the Public Prosecutor,
High Court of Kerala, Ernakulam-31.

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.207of 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.108 of 2020 of Nenmara Police Station registered alleging offences punishable under Sections 450, 375(b), 376 of IPC. Petitioner was arrested on 13.03.2020 and he is in custody.

3. The prosecution case is that on 12.03.2020 at about 12.00 hrs when the victim lady was alone at her house, the accused trespassed in to her house and forcefully made her lie on bed and kissed her on her private parts and thereafter inserted his finger on her

vagina

4. The counsel for the petitioner submitted that the petitioner is in custody for the last 53 days. He also contended that the house of the victim is situated adjacent to the house of the petitioner. There is a civil dispute between the family of the petitioner and the family of the victim, because of the enmity a false case is foisted against him.

5. The learned Public Prosecutor opposed the bail application saying that this is a serious offence committed by the petitioner and he opposed the release of the petitioner.

6. After hearing both sides, according to me the petitioner can be released on bail on stringent conditions. It is an admitted case that the petitioner and the victim are residing closely. The counsel for the petitioner alleged in the bail application that there is a civil dispute between the family of the petitioner and the family of the victim.

Of course, no details are mentioned in the bail application. Moreover, the investigating is also in the final stage. Considering the facts and circumstances of this case, I think this bail application can be allowed on stringent conditions.

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 Superintendent of Jail concerned where the petitioner is incarcerated is directed to release the petitioner on bail on executing a self bond ensuring that he will appear before the Court concerned as and when required, if he is not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioner as stipulated in Section 441

Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone number and the address at which the petitioner would be residing after his release.

3. The Superintendent of Jail concerned, immediately after release of the petitioner will forthwith forward the bail bond obtained from the petitioner to the jurisdictional Court.

4. The petitioner immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish his phone number and the place where he is going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioner and shall ensure that the

petitioner do not violate the terms of the undertaking.

5. 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.

6. The petitioner shall within one week from the commencement of the functioning of the jurisdictional court, if the court is not functioning at present, execute a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

7. The petitioner shall strictly abide by the various guidelines issued by the State

Government and Central Government with respect to keeping of social distancing and other directions in the wake of declared lock-down.

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

9. The petitioner shall not enter the jurisdiction of the Nenmara Police Station, till the final report of the above case is submitted before the Court, unless a notice is received from the Investigating Officer or from the Court.

P.V.KUNHIKRISHNAN, JUDGE