

B.A TMP 210 OF 2020

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 29TH DAY OF APRIL, 2020/9TH VAISAKHA, 1942

B.A TMP 210 OF 2020
Crime No:65/2020 of Vazhikadavu Police Station
Malappuram district

Petitioner/1st Accused:

JALEEL aged 42 years, s/o Mohammed
Manhakandan veedu, Pallippadi
Palemadu-Po, Edakkara amsom
Nilambur taluk Malappuram district
By **P. V E N U G O P A L**

Respondents/State & 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 B.A HAVING COME UP FOR ADMISSION ON 29.04.2020,
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.65 of 2020 of the Vazhikkadavu Police Station. The petitioner and other accused are alleged to have committed the offences punishable under Sections 451, 354, 354(i)(ii)(iv), 354D (i), 109 read with 34 of Indian Penal Code, Sections 10 read with section 9(l), 12 read with 11(i), 17 read with 16 of the POCSO Act and Section 75 of the Juvenile Justice Act.

3. The prosecution case, in brief, is that: the petitioner, who is accused in Crime No.62 of 2020 of Vazhikkadavu Police Station, had outraged the modesty of the sister of the victim, and also committed the above offences against the victim in this case. Thus, the petitioner along with other accused have committed the above offences.

4. The petitioner was arrested on 19.2.2020. His application for bail was dismissed by the Special Court for Trial of Offences against

Children (Additional Sessions Court-I), Manjeri, by order dated 23.4.2020 in C.M. P. No.90 of 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 out of the animosity of the second respondent against the petitioner. The petitioner is in custody for the last 71 days. The petitioner is entitled for statutory bail as provided under Section 167(2) of Cr.P.C. Hence, the petitioner may be enlarged on bail.

7. The learned Public Prosecutor opposed the bail application. Learned Public Prosecutor argued that due to the Covid -19 pandemic, Police are unable to conduct the statutory tests as contemplated under law. The petitioner, may be granted bail only on stringent conditions, ie., the petitioner may not be permitted to enter the jurisdictional limits of Vazhikkadavu 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 25.03.2020² 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. On an overall cumulative appreciation of the facts and circumstances of the case, particularly the fact that the petitioner has been in incarceration for the last 71 days; that the petitioner is entitled for statutory bail under Section 167(2) of Cr.P.C. as final report has not been filed even after lapse of 71 days; that the petitioner's continued detention is unnecessary; the legal proposition laid down by the Honourable Supreme Court in the aforesaid decisions; and also the directions of the Hon'ble Supreme Court and Full Bench of this Court to de-congest 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 Vazhikkadavu 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 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

B.A TMP 210 OF 2020

8

Court and file appropriate application seeking for
cancellation of the bail.

C.S.DIAS, JUDGE

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