

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.214 OF 2020

(Crime No.63/2020 of Meppadi Police Station, Wayanad District.)

**Petitioners/2<sup>nd</sup> & 3<sup>rd</sup> Accused**

1.Irshad.K.V., aged 19 years, S/o. Shafi,  
Kulangara Veedu,Vettam,  
Tirur,Malappuram District.

2. Sufail.P.V, aged 18 years, S/o. Ismail,  
Pandarithil House,  
Tirur,Malappuram District.

By Adv.U.K.Devidas

**Respondents/complainants.**

1.State of Kerala,  
represented by the Public Prosecutor, High Court of Kerala,  
Ernakulam, Kochi-682 031.

2.The S.H.O, Meppadi Police Station, Wayanad District, Pin-673 577.

BY Public Prosecutor SRI.AJITH MURALI & SRI.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.**

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B.A.TMP.No.214 of 2020  
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Dated this the 5<sup>th</sup> 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. The petitioners are the 2<sup>nd</sup> and the 3<sup>rd</sup> accused in Crime No.63/2020 of Meppadi Police Station. The above case is registered against the petitioners and others alleging offences punishable under Sections 376 and 366 read with Section 34 of the Indian Penal Code and Section 4 read with Section 3(a) of the Protection of Children from Sexual Offences Act.

3. The prosecution case is that, the 1<sup>st</sup> accused in the case kidnapped a minor girl aged 15 years from her house on 23.2.2020 and committed rape on her. The case of the prosecution is that, the petitioners are also involved in the case.

4. The learned counsel for the petitioners submitted that the petitioners are in custody from 13.3.2020 onwards. Investigation of the case is almost over. The petitioners have no criminal antecedents and they are aged only 19 and 18 years respectively. They are innocent. Hence the petitioners prayed for releasing them on bail.

5. The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor submitted that a minor girl is brutally raped by the accused and the petitioners have got involvement in this case.

6. After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. The arrest of the petitioners was on 13.3.2020. The offence alleged against the petitioners is heinous. The nature of accusation and the severity of the punishment in the case of conviction is also to be considered while considering the bail application. Moreover, in the interest of public, this is not a fit case, in which the bail can 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 petitioners can be released on bail. Hence this Bail Application is dismissed.

**P.V.KUNHIKRISHNAN, JUDGE**

skj