

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.219 OF 2020

(Crime No.332/2020 of Punaloor Police Station, Kollam Rural)

PETITIONER/ ACCUSED

Shyam Kumar P.S.,
Aged 21 Years ,
S/o.Pushpakumar P,
Mylackal Sharivila Veedu,
Plachery P O, Punaloor,
Kollam.

By Adv. Sri.M.R.Sasith Panicker

RESPONDENTS:

1. State of Kerala,
Represented by the Public Prosecutor,
High Court of Kerala, Ernakulam. Pin 682031
2. The Sub Inspector of Police,
Punaloor Police Station,
Kollam. Pin 691333

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.

B.A.TMP.No.219 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. The petitioner is the accused in Crime No.332/2020 of Punaloor Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 450, 506, 376AB of the Indian Penal Code and Sections 3A, 3(b), 4, 51, 5(m), 6, 11(V), 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. The petitioner was arrested on 28.2.2020.

3. The prosecution case is that, the de facto complainant, aged 11 years, was sexually abused by the petitioner on 31.1.2019 at about 3 pm. It is alleged that the petitioner unlawfully trespassed into the house of the de facto complainant with an intention to commit sexual intercourse

with the de facto complainant. It is alleged that the petitioner showed pronographic video to the de facto complainant putting her on threat and committed rape. It is also alleged that, on 07.09.2019, the petitioner repeated the act on the same place.

4. The learned counsel for the petitioner submitted that the petitioner is aged only 21 years. He is in custody from 28.2.2020. The petitioner has no criminal background. The learned counsel for the petitioner submitted that the petitioner has not committed any offence as alleged by the prosecution.

5. The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor submitted that a minor girl is brutally raped by the petitioner and he is not entitled for bail. According to the prosecution, sufficient materials are before the court to prove his guilt.

6. After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. The petitioner was arrested only on 28.2.2020. The allegations against the petitioner are serious. Considering the nature of accusation and the severity of the punishment in the case of conviction,

this is not a fit case to release the petitioner on bail at this stage. Moreover, if the petitioner is released on bail at this stage, it will give a wrong signal to the society.

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