

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.238 OF 2020

(Crime No.848/2019 of Vadanappilly Police Station, Thrissur)

PETITIONER/ACCUSED

Sharath, aged 23 years,  
S/o.Viswambaran  
Kurumbur House,  
Kundaliyur.P.O,  
Chavakkad Taluk,  
Thrissur

By Adv. 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,  
Vadanappilly Police Station,  
Thrissur. Pin: 680614

BY PUBLIC PROSECUTOR 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.**

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B.A.TMP.No.238 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. Petitioner is the accused in Crime No.848 of 2019 of Vadanappilly Police Station registered alleging offences punishable under Section 354A of the Indian Penal Code and under Section 11 & 12 of the Protection of Children from Sexual Offences (POCSO) Act. Petitioner was arrested on 23.4.2020 and he is in custody.

3. The prosecution case is that, on 26.11.2019 at 6.30 pm, the accused dirobed his pants, exhibited his urinating organ and asked the victim girl aged 10 years whether she wanted this.

4. The counsel for the petitioner submitted that the allegations against the petitioner are absolutely false. The

family of the petitioner and the family of the victim girl are residing adjacent. There is a civil dispute between the parties. Moreover, the father of the petitioner filed a complaint against the father of the victim on 03.12.2019. It is also submitted that there is animosity between the families and hence false case is foisted.

5. I am not in a position to decide whether the allegation against the petitioner is correct or not at this stage. But taking into consideration of the date of arrest and the duration of detention and also taking note of the fact that there is an alleged animosity between the family of the petitioner and the family of the victim girl, I think this bail application can be allowed. I am also taking note of the fact that there is a delay of four days in filing the complaint, of course, which can be explained by the prosecution during the trial. Any way, the continued detention of the petitioner is not necessary at this stage.

6. 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.

7. 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.

8. 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 does 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.

**P.V.KUNHIKRISHNAN, JUDGE**

skj