

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.74 OF 2020

(Crime No.1213/2016 of Valiyathura Police Station, Thiruvananthapuram District)

Petitioner/1st Accused:

Shaijan, S/o.Selvaraj, aged 26 years,
T.C.71/1551, Shyju House, Veppinmoodu,
Velankanni Junction, Valiyathura, Muttathara Village,
Thiruvananthapuram District.

By Adv. Sri Latheesh Sebastian

Respondents/State & Complainant:

1. State of Kerala, Represented by
Public Prosecutor, High Court of Kerala, Ernakulam - 682031.
2. Station House Officer,
Valiyathura Police Station, Thiruvananthapuram - 695008.

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.

B.A.TMP.No.74 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. Petitioner is the 1st accused in Crime No.1213/2016 of Valiyathura Police Station registered alleging offences punishable under Section 376(2) (n) of the Indian Penal Code and Sections 3, 4, 7 and 8 of Protection of Children from Sexual Offences Act. Petitioner was arrested on 06.03.2020 and he is in custody.

3.The prosecution case is that the petitioner pretending love and promising marriage taken the de facto complainant in his motor bike to the terrace of the petitioner's house in a day in December, 2014 and committed rape. It is further alleged that the petitioner taken the de facto complainant in the motor bike to the bedroom of the petitioner's house in a day in January, 2015 and again committed rape.

4. The counsel for the petitioner submitted that the petitioner is in custody from 6.3.2020 onwards. More than 60 days is over. It is also submitted by the learned counsel for the petitioner that the victim went along with the accused during mid night to the house of the accused and the allegation is that the accused committed rape on her from the house of the accused. The same incident happened in January, 2015 also. The complaint is filed on 13.8.2016.

5. The Public Prosecutor submitted that the petitioner was absconding and he was arrested only on 06.03.2020. The case was registered in the year 2016. There were six accused in the case and the case against accused Nos.2 to 6 were split and a split charge is already filed before court and the case is pending as S.C.No.1331/2018 before the Additional Sessions Court, Thiruvananthapuram. Therefore, the Public Prosecutor opposed the Bail Application.

6. After considering the facts in this case, I think this bail application can be allowed. The two incidents alleged are

happened in December, 2014 and in January, 2015. Both the incidents were happened, according to the prosecution, in the house of the accused. The admitted prosecution case is that, the victim girl went along with the accused during mid night to the house of the accused. Moreover, the complaint was filed only on 13.8.2016. According to me, the continued detention of the petitioner is not necessary at this stage.

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 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.

skj

P.V.KUNHIKRISHNAN, JUDGE