

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.S. DIAS

TUESDAY, THE 21st DAY OF APRIL 2020/1st VAISAKHA , 1942

Crl Appeal No:278 of 2020

**(against the order in Crl M P No:245/2020 dated
29.01.2020 on the file of the 1st Additional Sessions
Judge, Thrissur in Crime No:1124 of 2019 of Chalakudy
Police Station)**

Appellant/Accused:

Richy Antony, S/o.Antony, aged 21

Thamaraparambil House, Moonjali Desom

West Chalakudy, Thrissur District

By Advocates M M Deepa K/491/95 and P Maya K/491/97

Respondents/ State & Victim

1.State of Kerala Represented by Public Prosecutor,
High Court of Kerala, Ernakulam 682031

2.XXXX(Victim)

By Public Prosecutor Sri.

THIS Crl.A HAVING BEEN FINALLY HEARD ON 24.04.2020, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

J U D G M E N T

This appeal is filed challenging order dated 29.1.2020 passed by the Additional Sessions Court-I, Thrissur in CrI. M.P. No.245 of 2020.

2. Appellant is the accused in Crime No.1124 of 2019 of Chalakkudy Police Station. The appellant is alleged to have committed the offences punishable under Sections 450, 354(A), 376, 376(2) of Indian Penal Code read with Sections 3, 4, 5, 6, 7, and 8 of the POCSO Act and Sections 3(1)(w)(1) and 3(2)(v) of Scheduled Castes/ Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The appellant was arrested on 17.1.2020. His application for bail was dismissed by Additional Sessions Court-I Thrissur as per order dated 29.1.2020 in CrI. M.P. No.245 of 2020.

4. Heard the learned counsel for the appellant and the learned Public Prosecutor via video-conferencing.

5. Even though notice was served on the second respondent (victim), there is no appearance for the second

respondent.

6. Learned counsel for the appellant argued that the appellant has been in judicial custody since 17.1.2020. It is now 98 days. The appellant is entitled for statutory bail as contemplated under Section 167 (2) of the Code of Criminal Procedure.

7. The learned Public Prosecutor does not dispute the fact that appellant has been in custody since 17.1.2020. Final report has not been filed till date. He also concedes that the appellant is entitled for statutory bail under Section 167 (2) of the Code of Criminal Procedure.

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. Having regard to the facts and circumstances of the case, especially that the appellant is in custody since 17.1.2020; and that the final report has not been filed till date, even after elapse of 98 days, it is indefeasible right of the appellant to get statutory bail under Section 167 (2) of the Code of Criminal Procedure. Hence I allow this appeal.

11. In the result this appeal is allowed. Order dated 29.1.2020 in CrI. M.P. No.245 of 2020 passed by Additional Sessions Court-I Thrissur is set aside. The appellant is entitled for bail on the following conditions:-

(i) Due to the present National lock-down and the closure of Courts, the Jail Superintendent, where the appellant is incarcerated, is directed to release the appellant on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed sureties/immediate relatives. The appellant 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 appellant 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 appellant. The Investigating Officer shall keep a close vigil on the whereabouts of the appellant.

(ii) The appellant 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 appellant 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 appellant shall not tamper with the evidence or influence the witnesses in the case, in

any manner, whatsoever.

(v) The appellant shall not commit any offence while on bail.

(vi) The appellant shall not leave the State of Kerala without the permission of the jurisdictional court.

(vii) Needless to mention that, if the appellant violates any of the above conditions, the St

J U D G M E N T

This appeal is filed challenging order dated 29.1.2020 passed by the Additional Sessions Court-I, Thrissur in CrI. M.P. No.245 of 2020.

2. Appellant is the accused in Crime No.1124 of 2019 of Chalakkudy Police Station. The appellant is alleged to have committed the offences punishable under Sections 450, 354(A), 376, 376(2) of Indian Penal Code read with Sections 3, 4, 5, 6, 7, and 8 of the POCSO Act and Sections 3(1)(w)(1) and 3(2)(v) of Scheduled Castes/ Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The appellant was arrested on 17.1.2020. His application for bail was dismissed by Additional Sessions Court-I Thrissur as per order dated 29.1.2020 in CrI. M.P. No.245 of 2020.

4. Heard the learned counsel for the appellant and the learned Public Prosecutor via video-conferencing.

5. Even though notice was served on the second respondent (victim), there is no appearance for the second

respondent.

6. Learned counsel for the appellant argued that the appellant has been in judicial custody since 17.1.2020. It is now 98 days. The appellant is entitled for statutory bail as contemplated under Section 167 (2) of the Code of Criminal Procedure.

7. The learned Public Prosecutor does not dispute the fact that appellant has been in custody since 17.1.2020. Final report has not been filed till date. He also concedes that the appellant is entitled for statutory bail under Section 167 (2) of the Code of Criminal Procedure.

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. Having regard to the facts and circumstances of the case, especially that the appellant is in custody since 17.1.2020; and that the final report has not been filed till date, even after elapse of 98 days, it is indefeasible right of the appellant to get statutory bail under Section 167 (2) of the Code of Criminal Procedure. Hence I allow this appeal.

11. In the result this appeal is allowed. Order dated 29.1.2020 in Crl. M.P. No.245 of 2020 passed by Additional Sessions Court-I Thrissur is set aside. The appellant is entitled for bail on the following conditions:-

(i) Due to the present National lock-down and the closure of Courts, the Jail Superintendent, where the appellant is incarcerated, is directed to release the appellant on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed sureties/immediate relatives. The appellant 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 appellant 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 appellant. The Investigating Officer shall keep a close vigil on the whereabouts of the appellant.

(ii) The appellant 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 appellant 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 appellant shall not tamper with the evidence or influence the witnesses in the case, in

any manner, whatsoever.

(v) The appellant shall not commit any offence while on bail.

(vi) The appellant shall not leave the State of Kerala without the permission of the jurisdictional court.

(vii) Needless to mention that, if the appellant violates any of the above conditions, the Station House Officer shall be at liberty to approach the jurisdictional Court and file appropriate application seeking for cancellation of the bail.

C.S.DIAS, JUDGE

sou.

