

Cr1.A No.352 of 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 28TH DAY OF APRIL, 2020 /8TH VAISAKHA, 1942

Cr1.A No.352 of 2020

**PETITIONER/APPELLANT :**

Subin, Aged 25 years S/o. Susheelan Cherivukalayil Pookottumanna  
Post Nilambur

By Adv.Sheji P.Abraham

**RESPONDENTS/ RESPONDENTS/DE FACTO COMPLAINANT**

1. Sub Inspector of Police

Vazhikkadavu Police Station Malappuram District -679 333

2. State of Kerala

Rep. by the Public Prosecutor High Court of Kerala, Ernakulam - 31.

3. Victim XXX

BY PUBLIC PROSECUTOR SRI.**AJITH MURALI**

THIS CRL.A HAVING COME UP FOR ADMISSION ON  
28.04.2020, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

## **J U D G M E N T**

This appeal is filed challenging order dated 02.03.2020 passed by the Special Court for SC/ST (POA) Act & NDPS Act Cases, Manjeri in Cr1. M.P. No.285 of 2020.

2. Appellant is the accused in Crime No.69 of 2020 of the Vazhikkadavu Police Station. The appellant is alleged to have committed the offences punishable under Sections 376(2) (n) and 366 of the Indian Penal Code and 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

3. The appellant was arrested on 22.02.2020. His application for bail was dismissed by the above Special Court by the impugned order.

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

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

6. The learned counsel for the appellant argued that the appellant has been in judicial custody since 22.02.2020, which is now 66 days. The investigation in the case is practically complete. The accusations levelled against the appellant are absolutely false. No useful purpose would be served in the continuous detention of the appellant.

7. The learned Public Prosecutor opposed the appeal. The learned Public Prosecutor does not dispute the fact that appellant was arrested on 22.02.2020. He concedes the fact that the investigation in the case is practically complete. However, he insists that the appellant may be enlarged on bail only on stringent conditions.

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, particularly the fact that the appellant has been in detention for last 66 days; that the investigation in the case is practically complete; that the petitioner's further detention is unnecessary; the legal proposition laid down by the Honourable Supreme Court in the afore cited decisions; and the directions of the Hon'ble Supreme Court and a Full Bench

of this Court to decongest prisons in view of Covid-19 pandemic, I am inclined to allow this appeal.

11. In the result this appeal is allowed. Order dated 02.03.2020 in Crl. M.P. No.285 of 2020 passed by the Special Court for SC/ST (POA) Act & NDPS Act Cases, Manjeri is set aside. The appellant is enlarged on 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 Tuesdays and 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**