

CRL.A TMP NO.1 OF 2020

1

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

CRL.A TMP NO.1 OF 2020

(Against the order dated 26.02.2020 in CMP No.371/2020 in Crime No 63/2020 of Chirayinkeezhu Police Station of the Hon'ble Additional Sessions Court, for the trial of cases relating to atrocities and sexual violence against women and children, Thiruvananthapuram)

Appellant / Accused:

Samjith, aged 19 years,
S/o Subash,
Kunnu vila veedu,
Kolicchira, Near Nagaruvu Kavu,
Azhoor Village, Chirayinkeezhu Taluk,
Thiruvananthapuram. 695304.

By M.R.SARINPANICKER

RESPONDENTS:

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

2 The Sub Inspector of Police Chirayinkeezhu Police Station ,
Trivandrum, Represented by the Public Prosecutor. 682031

BY PUBLIC PROSECUTOR SRI **.AJITH MURALI**

THIS CRL.A HAVING BEEN FINALLY HEARD 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 26.02.2020 passed by the Additional Sessions Judge for the Trial of Cases Relating to the Atrocities and Sexual Violence Against Women and Children, Thiruvananthapuram in Crl.M.P.No.371 of 2020.

2. Appellant is the accused in Crime No.63 of 2020 of the Chirayinkeezhu Police Station. The appellant is alleged to have committed the offences punishable under Sections 450, 376(2)(i)(n), 506 (i), 323 IPC and Section 4 r/w 3(a), 6 r/w 5(l) of Protection of Children from Sexual Offences Act, 2012 and Section 3(ii)(V) SC/ST (POA) Act.

3. The appellant was arrested on 26.01.2020. His application for bail was dismissed by the above 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 is in judicial custody since 26.01.2020, which is now 93 days. The appellant is absolutely innocent of the accusations levelled against him. The appellant is entitled for statutory bail as contemplated under Section 167(2) of the Code of Criminal Procedure, as the Investigating Officer has not filed the final report.

7. The learned Public Prosecutor opposed the appeal. The learned Public Prosecutor, however, does not dispute the fact that appellant is in custody for the last 93 days. It is also not disputed that the final report has not been filed, till date. The learned Public Prosecutor concedes that the appellant is entitled for statutory bail as provided under Section 167(2) of the Code of Criminal Procedure, as the Investigating Officer has not filed the final report. 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; especially the fact that the appellant is in custody since 25.01.2020, which is now 93 days; and that the final report has not been filed till date, even after elapse of 93 days and it is the infeasible right of the appellant to get statutory bail as

provided Section 167 (2) of the Code of Criminal Procedure; and the legal propositions laid down by the Honourable Supreme Court in the afore cited decisions, I am inclined to allow this appeal.

12. In the result this appeal is allowed. Order dated 26.02.2020 passed by the Additional Sessions Judge for the Trial of Cases Relating to the Atrocities and Sexual Violence Against Women and Children, Thiruvananthapuram in Crl.M.P.No.371 of 2020 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