

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 07TH DAY OF DECEMBER 2020 / 16TH AGRAHAYANA, 1942

Bail Appl..No.8204 OF 2020

CRIME NO.744/2018 OF KUNNAMKULAM POLICE STATION, THRISSUR

PETITIONER:

FAHAD HASSAN ALI
AGED 27 YEARS
NALAKKATH HOUSE,
KARIKKAD,
KUNNAMKULAM - 680519

BY ADV. SRI.SAIJO HASSAN

RESPONDENT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM - 682031

R1 BY PUBLIC PROSECUTOR

OTHER PRESENT:

SRI.RENJITH.T.R., PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
07.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

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B.A.No. 8204 of 2020

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Dated this the 7th day of December, 2020

ORDER

This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. The petitioner is the accused in Crime No. 744 of 2018 of Kunnamkulam Police Station, Thrissur District. The above case is registered against the petitioner alleging offence punishable under Section 376 of the Indian Penal Code.

3. The prosecution case is that the petitioner and the de facto complainant were in love. The victim de facto complainant is aged 26 years and she is a divorcee and she had two children. The admitted case of the victim is

that, she was in love with the petitioner and the petitioner and the victim used to contact over phone and text messages. It is alleged that, on 28.02.2018 the petitioner came to the house of the victim at night. The victim allowed him to enter the house. Thereafter, the petitioner sexually abused the victim. Hence, she filed a complaint on 22.08.2018 alleging that the petitioner committed rape on her without her consent. Hence, it is alleged that the petitioner committed the offence under Section 376 IPC.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

5. The learned counsel for the petitioner submitted that, this is a false case foisted against the petitioner. The learned counsel submitted that, even if the entire allegations are accepted, the sexual intercourse was with the consent of the victim. The learned counsel submitted that, the alleged incident happened on 28.02.2018. Thereafter, the victim sent a lawyer notice on 02.08.2018 to the petitioner, in which the lawyer informed the

petitioner that, his client instructed him to initiate proceedings under Section 376 IPC against the petitioner. The petitioner sent a reply to the lawyer notice on 23.08.2018. Meanwhile, the FIS is submitted by the victim on 22.08.2018. The learned counsel submitted that, this is a false case foisted against the petitioner to grab money from the petitioner. The learned counsel submitted that, the petitioner left India on 18.07.2018 and thereafter he is coming to India today. The learned counsel submitted that, there is apprehension of arrest to the petitioner. The learned counsel submitted that, when the petitioner was in abroad, he filed an application under Section 438 Cr.P.C. which was dismissed by this Court as per Annexure -1 order in which this Court observed that the bail application is not maintainable, because the petitioner was at abroad at that time. The learned counsel also submitted that, the petitioner is ready to abide any conditions, if this Court grant him bail. The learned counsel also takes me through the averments in para 7 of the bail application, in which it

is stated that, the victim is involved in three other criminal cases. The learned counsel also submitted that, another crime which is registered as Crime No. 1433 of 2017 of Kunnamkulam Police Station is against another person alleging offence under Section 376 IPC. The learned counsel submitted that, the petitioner may be released on bail under Section 438 Cr.P.C.

6. The learned Public Prosecutor opposed the Bail Application. The learned Public Prosecutor submitted that, the custodial interrogation of the petitioner is necessary.

7. After hearing both sides, I think this bail application can be allowed on stringent conditions. Admittedly, the victim is a major lady. The alleged incident happened on 28.02.20018. Instead of filing a complainant before the police, the victim sent a lawyer notice to the petitioner. Thereafter, the complaint is filed on 22.08.2018. According to the petitioner, he left in India on 18.07.2018 and thereafter coming to India on today. I don't want to make any observations about the merit of

the case. The learned Public Prosecutor made available the FI Statement given by the victim. I perused the same. Considering the entire facts and circumstances of this case, I think this bail can be allowed on stringent conditions.

8. 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.

9. 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.

10. 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 petitioner shall appear before the Investigating Officer within ten days from today and shall undergo interrogation;

2. After interrogation, if the Investigating Officer proposes to arrest the petitioner, he shall be released on bail executing a bond for a sum of Rs.50,000/-(Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the officer concerned;

3. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner shall co-operate with the

investigation and shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

4. The petitioner shall not leave India without permission of the Court;

5. The petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected;

6. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing in the wake of Covid 19 pandemic.

7. The petitioner shall appear before the Investigating Officer on all monday's at 10 a.m. for a period of two months.

8. The petitioner shall surrender his passport before the Investigating Officer.

If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court.

(Sd/-)
P.V.KUNHIKRISHNAN
JUDGE

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