

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.8067 OF 2020

CRIME NO.685/2020 OF Mankara Police Station , Palakkad

PETITIONER:

RADHAKRISHNAN,
AGED 40 YEARS,
S/O.SUNDARAN,
MALAMPALLA VEEDU, CHERUMPALA, MANNUR, PALAKKAD
DISTRICT-678642

BY ADV. SRI.P.JAYARAM

RESPONDENT:

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

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

B.A.No.8067 of 2020

Dated this the 7th day of December, 2020

O R D E R

This Bail Application is filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the accused in Crime No.685 of 2020 of Mankara Police Station, Palakkad. The above case is registered against the petitioner alleging offences punishable under Sections 376, 354A(I)(ii), 506(i) and Section 384 IPC.

3. The prosecution case is that the accused continuously intimidated the de facto complainant stating that her private videos recorded by him is with him and he threatened that he will upload the same in whatsapp and facebook. It is alleged that on 15.1.2020 at 4 am, when the husband of the victim was not there in the house, the petitioner came to the house of the victim and took her to a paramba and committed rape. It is alleged that subsequently also the petitioner used to contact

the victim and the victim also says in her First Information Statement that a gold chain and an amount of Rs.20,000/- is also taken by the petitioner. She says that her relationship with her husband is now strained because of this incident and now she is residing in her house. The petitioner is arrested in this case on 16.9.2020.

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

5. The counsel for the petitioner submitted that the petitioner is in custody from 16.9.2020 onwards. The counsel submitted that the allegation against the petitioner is not correct. The counsel submitted that even if the entire allegations are accepted, no offence under Section 376 IPC is made out. The counsel submitted that the victim is a major lady and if we go through the averments in the First Information Statement, according to the counsel, the sexual intercourse was with her consent. The counsel submitted that the petitioner is ready to abide any conditions, if this Court grant him bail.

6. The Public Prosecutor opposed the bail application. The Public Prosecutor submitted that the offence under Section 384 IPC was subsequently added. But the Public Prosecutor conceded that as on today, the gold ornaments or the amount alleged to be taken by the accused is not recovered. The Public Prosecutor submitted that the investigation on that is going on.

7. After hearing both sides, I think this bail application can be allowed on stringent conditions. Admittedly, the petitioner is in custody from 16.9.2020 onwards. The Public Prosecutor made available the First Information Statement given by the victim. I perused the same. I do not want to make any observation about the merit of the case.

8. Considering the entire facts and circumstances of the case and considering the detention period of the petitioner, I think this bail application can be allowed on stringent conditions.

9. 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.

10. 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.

11. 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. Petitioner shall be released on bail on executing 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.

2. 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.

3. Petitioner shall not leave India without permission of the jurisdictional Court.

4. 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.

5. 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.

6. 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