

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 11TH DAY OF DECEMBER 2020 / 20TH AGRAHAYANA, 1942

Bail Appl..No.8153 OF 2020

CRIME NO.3110/2020 OF Kattakada Police Station ,
Thiruvananthapuram

PETITIONER:

ANSARI
AGED 26 YEARS
S/O ALIFE,
NEERAMKOTTUKONAM HOUSE, POOVACHAL P.O.,
UNDANPPARA, PERUMKULAM VILLAGE, THIRUVANANTHAPURAM
DISTRICT.
PIN-695575

BY ADV. SRI.P.P.BIJU

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM,
PIN-682031
- 2 XXX
AGED 16 YEARS
XXX

PP SRI. T.R.RANJITH

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.8153 of 2020

Dated this the 11th day of December, 2020

O R D E R

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

2. Petitioner is the 4th accused in Crime No.3110 of 2020 of Kattakada Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 450, 323, 363, 370, 109, 376(2)(n) and Section 34 IPC. The offence under Section 4 read with Section 3(a), Section 6 r/w. Section 5(l), Section 17 r/w. Section 16 of the POCSO Act is also alleged. As far as the present petitioner is concerned, the allegation is mainly for the offence under Section 17 r/w. Section 16 of the POCSO Act.

3.The prosecution case is that the 1st accused and the victim girl were in love. The further case of the prosecution

that the accused trespassed into the house of the victim girl and 1st accused abducted the de facto complainant's minor daughter and subjected her to sexual intercourse on multiple occasions. The allegation against the petitioner is that he facilitated the commission of the offence.

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

5. The counsel for the petitioner submitted that there is no serious allegation against the petitioner. The allegation is against the 1st accused. The 1st accused and the victim were in love. The victim eloped with the 1st accused. There is no allegation of rape against this petitioner. The counsel submitted that the petitioner filed a bail application in this Court on an earlier occasion and that time the Public Prosecutor submitted that the petitioner is involved in another case. That bail application was withdrawn with liberty to file it again. Now the petitioner obtained bail in the other case. The counsel submitted that in this case, there is no serious allegation against the petitioner and he is entitled the benefit

of the Full Bench decision in WP(C) No.9400 of 2020.

6. The Public Prosecutor opposed the bail application. But the Public Prosecutor conceded that the main allegation is against the 1st accused and the allegation against this petitioner is under Section 17 r/w. Section 16 of the POCSO Act.

7. I do not want to make any observation about the merit of the case. The only allegation against the petitioner is that he committed the offence under Section 17 r/w. Section 16 of the POCSO Act. In other words, the allegation is that the petitioner facilitated the 1st accused to abduct the victim.

8. Considering the entire facts and circumstances of the case, 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. The petitioner shall appear before the Investigating Officer within ten days from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose 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. Petitioner shall not leave India without permission of the jurisdictional Court.

5. 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. 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