

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 16TH DAY OF DECEMBER 2020 / 25TH AGRAHAYANA, 1942

Bail Appl..No.8138 OF 2020

CRIME NO.1136/2020 OF Medical College Police Station , Kozhikode

PETITIONER/ACCUSED:

AKBAR @ AKBAR ALI KHAN
AGED 45 YEARS
DARULHUDA HOUSE, KUTTMANGALAM,
WMO SCHOOL, MUTIL SOUTH, WAYANADU.
PIN-673522

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT/:

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

R1 BY PUBLIC PROSECUTOR

OTHER PRESENT:

SRI.RENJITH.T.R., PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
16.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.8138 of 2020

Dated this the 16th day of December, 2020

O R D E R

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.1136 of 2020 of Medical College Police Station, Kozhikode. The above case is registered against the petitioner and another alleging offences punishable under Sections 363, 354-B 370-A, 376-D of the IPC and Sections 4 r/w 3(a), 6 r/w 5(g), 8 r/w Section 7 of the Protection of Children from Sexual Offences Act.

3. The prosecution case is that one day in March 2020, the accused No.1 kidnapped the victim girl aged 17 on his bike and then brought her to a flat at

Chevayur. From there, accused No.1 brought the victim to an unfinished house at Wayanad. Then accused No.2 who was arranged by A1 disrobed the victim and then hold her breast and sexually abused. It is also alleged that accused No.2 inserted his fingers into her vagina and taken out his penis and sexually abused. Hence it is alleged that the accused committed the offence. According to the prosecution, the victim became pregnant also.

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

5. The counsel for the petitioner submitted that even if the entire allegations are accepted, the offences are not attracted. According to the counsel, it is the admitted case of the prosecution that the victim girl is voluntarily going with the first accused to Wayand. It is a further case of the victim girl that she was taken to a house. The counsel submitted that in the first information statement there is no penetrative

sexual assault alleged. Subsequently, when the investigating officer changed, a new statement is obtained from the victim, just to see that serious offences are added in the case. 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 allegations against the petitioner are very serious. The Public Prosecutor submitted that even if the contention of the petitioner is accepted, the offence is attracted because, the victim in this case is a minor girl. The Public Prosecutor submitted that this Court may not invoke the jurisdiction under Section 438 Cr.P.C in this case.

7. After hearing both sides, I think this is not a fit case in which orders under Section 438 Cr.P.C can be passed. At this stage, the counsel for the petitioner submitted that the petitioner will surrender before the

investigating officer and will co-operate with the investigation. Therefore, this bail application is disposed of with the following directions.

1. The petitioner will surrender before the Investigating Officer within three weeks from today.
2. If the petitioner surrender before the Investigating Officer, the Investigating Officer can interrogate him. After interrogation if the petitioner is arrested, he will be produced before the jurisdictional court on the same day.
3. At that stage, if any bail application is filed by the petitioner after giving prior notice to the Prosecutor concerned, the learned Magistrate will consider the bail application preferably on the date of filing of the same itself.

Sd/-

P.V.KUNHIKRISHNAN, JUDGE

al/-