

Jayapalan vs State of Kerala

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Court : Kerala

Decided On : Oct-19-2020

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Bail Appl./6568/2020

Appellant : Jayapalan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
MONDAY, THE 19TH DAY OF OCTOBER 2020 / 27TH ASWINA, 1942
Bail Appl..No.6568 OF 2020 CRIME NO.950/2020 OF Tirur Police
Station , Malappuram PETITIONER/ACCUSED: JAYAPALAN AGED 46
YEARS S.O. VELAYUDHAN, KATTIPARAMBIL HOUSE, VETTOM P.O,
TIRUR TALUK, MALAPPURAM DISTRICT. BY ADV.
SRI.P.T.SHEEJISH

RESPONDENT/: STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA R1 BY PUBLIC PROSECUTOR
OTHER PRESENT: SRI.RENJITH.T.R., PP THIS BAIL APPLICATION HAVING
COME UP FOR ADMISSION ON 19.10.2020, THE COURT ON THE SAME DAY

PASSED THE FOLLOWING: B.A.No. 6568 OF 2020 2

P.V.KUNHIKRISHNAN, J.

----- B.A.No.6568 of 2020 ----- Dated this
the 19th day of October, 2020

ORDER

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

2. Petitioner is the second accused in Crime No.950 of 2020 of Tirur Police Station. The above case is registered against the petitioner alleging offences punishable under Section 11(iii) r/w Section 12 of the POCSO Act. The offence under Section 67A of the Information Technology Act is also alleged.

3. The prosecution case is that on 6.8.2020 the

petitioner sexually harassed the defacto complainant who is a minor by transmitting and showing pornographic video through Whatsapp. Hence it is alleged that the petitioner committed the offence. B.A.No. 6568 OF 2020 3

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

5. The counsel for the petitioner submitted that

the allegation against the petitioner is not correct. He has not committed any act deliberately. The counsel submitted that in fact the incident in this case was an unfortunate accident and the petitioner was not at all involved in this case. The counsel submitted that the maximum punishment that can be imposed as per Section 12 and as per Section 67 A of the Information Technology Act are all below seven years. The counsel submitted that the petitioner is entitled order as per the Full Bench decision of this Court.

6. The Public Prosecutor opposed the bail application. The Public Prosecutor submitted that the allegations against the petitioner are very serious.

7. After hearing both sides, I think, this bail application can be allowed on stringent conditions. I don't want to make any observation on the merit of B.A.No. 6568 OF 2020 4 the case. It is true that the allegations are serious. Admittedly, the maximum punishment that can be imposed for the offences alleged against the petitioner

are below seven years. Considering the entire facts

and circumstances of the case, I think this bail application 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 B.A.No. 6568 OF 2020 5 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 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 B.A.No. 6568 OF 2020 6 him from disclosing such facts to the Court or to any police officer.

4. Petitioner shall not leave India without permission of the Court.

5. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which she 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 al/-

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