

C.P.Ummer vs State of Kerala

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Court : Kerala

Decided On : Oct-30-2020

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Bail Appl./6882/2020

Appellant : C.P.Ummer

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 30TH DAY OF OCTOBER 2020 / 8TH KARTHIKA, 1942
Bail Appl..No.6882 OF 2020 CRIME NO.670/2020 OF Beypore Police
Station , Kozhikode PETITIONER: C.P.UMMER AGED 58 YEARS
CHERUPURAKKAL HOUSE, PULIMUTTU ROAD CHALIYAM P.O.,
KOZHIKODE DIST. PIN-673301 BY ADV. SRI.T.K.SANDEEP
RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM, PIN-682031
2 XXX AGED 11 YEARS VICTIM REPRESENTED BY FATHER XXX
SRI.RENJITH.T.R., PP THIS BAIL APPLICATION HAVING COME UP
FOR ADMISSION ON 30.10.2020, THE COURT ON THE SAME DAY

PASSED THE FOLLOWING: B.A.No.6882 of 2020 2
P.V.KUNHIKRISHNAN, J ----- B.A.No.6882 of 2020
----- Dated this the 30th day of October, 2020

ORDER

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

2. Petitioner is the accused in Crime No.670 of 2020 of

Beyepore Police Station, Kozhikode. The above case is registered against the petitioner alleging offences punishable under Sections 376 (AB) IPC and Section 5(m)(n) read with Sections 6, 9 (l)(m)(n) read with Section 10 of the Protection of Children from Sexual Offences Act. 3. The prosecution case is that, the accused is the husband of the sister of the mother of the victim. Victim is a girl born on 9.8.2010. One day when the victim was studying in the 4th standard, it is alleged that the accused committed penetrative sexual assault on the victim by inserting his finger into her vagina. Then on 24.7.2020 at 7 a.m, accused with sexual B.A.No.6882 of 2020 3 intent hugged her and bite on her cheek and lip. It is also alleged that the accused pressed her breast and also tried to remove the underwear worn by her. Hence, it is alleged that the accused committed the aforesaid offences.

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

5. The counsel for the petitioner submitted that the

petitioner was arrested in connection with offence on 1.8.2020. The counsel submitted that now 90 days over. The final report is not filed even now in this case. Therefore, the petitioner is entitled orders under Section 167(2)Cr.P.C.

6. The Public Prosecutor after getting instruction from the investigating officer conceded that the investigation is not over and the final report is not filed.

7. When this bail application came up for consideration, this Court passed the following order.: Issue urgent notice by speed post to the second respondent.

2. The Public Prosecutor will instruct the investigating officer to issue notice to the victim in this case informing that this Bail B.A.No.6882 of 2020 4 Application is posted for final hearing to 22.10.2020. Post on 22.10.2020. Issue a copy of this order to the office of the Advocate General through e-mail.

8. The Public Prosecutor submitted that the notice is

already served to the victim. There is no appearance for the victim. Admittedly the petitioner was arrested on 1.8.2020. Now 90 days over. No final report is filed in this case. Therefore, the petitioner is entitled bail under Section 167(2) Cr.P.C.

9. Considering the entire facts and circumstances of the case, I think this bail application can be allowed on stringent conditions.

10. 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 B.A.No.6882 of 2020 5 directions for minimizing the number of inmates inside prisons.

11. 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.

12. 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 B.A.No.6882 of 2020 6

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. B.A.No.6882 of 2020 7

6. The petitioner shall not enter the jurisdictional limit of Beypore Police Station, Kozhikode where the victim in this case is residing.

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 cms

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