
(2020) 12 KL CK 0083
In the High Court Of Kerala
Case No : Bail Application No. 8112 Of 2020

Abdul Rehman

APPELLANT

Vs

State Of Kerala And Anr

RESPONDENT

Date of Decision : 04-12-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438, 439
Indian Penal Code, 1860 — Section 376, 376(2)(n), 406
Information Technology Act, 1872 — Section 66E, 67

Citation : (2020) 12 KL CK 0083

Hon'ble Judges : P.V. Kunhikrishnan, J

Bench : Single Bench

Advocate : Rasheed C. Nooranad, Renjith. T.R.

Final Decision : Allowed

Judgement

1. 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.562 of 2020 of Vanitha Cell, Pathanamthitta. The above case is registered against the petitioner alleging offences punishable under Section 376 (2)(n) and Section 406 IPC. The offence under Sections 66E and 67 of the Information Technology Act is also alleged.
3. The prosecution case is that the petitioner under the pretext to release the husband of the de facto complainant from judicial custody, collected an amount of Rs.5,00,000/- from the complainant. Thereafter, under the pretext of meeting the lawyer, the victim was taken to a lodge and from there the petitioner committed forcible rape on the victim. Thereafter, the petitioner committed sexual intercourse with the victim on several occasions. It is

alleged that the victim travelled with the petitioner at Delhi, Bombay and Chennai and they stayed together. Subsequently, the husband was released

from jail. Then the husband became suspicious about the relationship between the petitioner and the victim. Thereafter, the victim left the house. The

victim herself admit that she travelled with the petitioner at different places. It is alleged that during that period the petitioner committed raped on her.

It is also alleged that the petitioner took nude photographs of the victim and threatened the victim that he will upload the same in social media. This is

the sum and substance of the allegation against the petitioner.

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

5. The counsel for the petitioner submitted that the petitioner filed a bail application before this Court under Section 438 Cr.P.C earlier as

B.A.No.7559 of 2020. This Court was not inclined to grant bail under Section 438 Cr.P.C. But this Court directed the petitioner to surrender before

the Investigating Officer within ten days and thereafter, the Investigating Officer was allowed to interrogate the petitioner. If the petitioner is arrested,

the Investigating Officer was directed to produce the petitioner before the jurisdictional Court. The jurisdictional Court was directed to consider the

bail application of the petitioner preferably on the date of filing of the same itself. The counsel submitted that the petitioner surrendered before the

Investigating Officer. After interrogation, the Investigating Officer produced the petitioner before the jurisdictional Court. The counsel submitted that

flouting the directions of this Court in the bail order, the learned Magistrate adjourned the matter on two occasions and finally dismissed the bail

application on 27.11.2020. The petitioner moved the bail application after giving prior notice to the prosecutor concerned. The counsel submitted that it

is a clear case in which the learned Magistrate violated the order passed by this Court. Moreover, the counsel also submitted that even if the entire

allegations against the petitioner are accepted, the offence under Section 376 IPC is not made out. The counsel submitted that the petitioner is in

custody from 25.11.2020 onwards. 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 allegation against the petitioner are very serious.

7. It is an admitted fact that the petitioner moved an application under Section

438 Cr.P.C before this Court. This Court was not inclined to grant bail to the petitioner under Section 438 Cr.P.C. In such circumstances, this Court issued the following directions.

1. The petitioner will surrender before the Investigating Officer within ten days 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.

8. One of the grievance raised by the petitioner is that the learned Magistrate ignoring the directions of this Court, bail application was adjourned on

two occasions. The counsel submitted that there is no mentioning of the order passed by this Court in the order dismissing the bail application. The

specific averment is made in the bail application which is extracted hereunder:

â??As per the direction of this Hon'ble Court this petitioner surrendered before the Investigating Officer on 25.11.2020. The petitioner was produced

before the Jurisdictional Magistrate on the same day at about 3 pm. This petitioner has moved regular bail application before the Magistrate Court

after giving prior notice to the prosecutor concern. After hearing the petitioner the case was adjourned to 26.11.2020. On that day the learned

Magistrate again posted to 27.11.2020 for Police report. The learned magistrate dismisses the bail application filed by the petitioner on 27.11.2020.

The true copy of the order in CrI.M.P No.1497/2020 is produced herewith and marked as Annexure-II. It is respectfully submitted that no custody

application was filed by the police in the above case.â??

9. When directions are issued by this Court, the lower judiciary is bound to obey the same. If there is any reason for not complying the orders, it should

be specifically mentioned by the learned Magistrate. I do not want to make any observation in this case, because it is a matter to be looked into by the

Registrar (Subordinate Judiciary) and other authorities on the administrative side. If the contention raised by the counsel for the petitioner is correct, it

is a serious matter. This Court directed to consider the bail application preferably on the date of filing of the same. But the learned Magistrate

adjourned the matter twice without mentioning anything about the order passed by this Court. Admittedly the order of this Court is produced before the Magistrate. The learned Magistrate is free to dismiss or allow the bail application because, there is no direction in the order to allow or dismiss the bail application. But, there is a direction to consider the bail application preferably on the date of surrender itself. Without assigning any reason, the learned Magistrate adjourned the bail application on two occasions. If there was any other inconvenience to the learned Magistrate for passing the order, the same ought to have been mentioned in the order. I leave it there.

10. Admittedly, the petitioner is in custody from 25.11.2020. The Public Prosecutor made available the First Information Statement in this case. I do not want to make any observation about the merit of the case. But considering the entire facts and circumstances of the case and also considering the fact that the petitioner is in custody from 25.11.2020, I think this bail application can be allowed.

11. 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.

12. 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.

13. 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.

The Registry will issue a copy of this order to the Registrar(Subordinate Judiciary) for looking into the matter in accordance with law.