

(2020) 11 KL CK 0168
In the High Court Of Kerala
Case No : Bail Application No. 7874 Of 2020

Mohammad Basha P @ Basha

APPELLANT

Vs

State Of Kerala And Anr

RESPONDENT

Date of Decision : 27-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 34, 376, 376(D), 376(2)(n), 506(i)

Citation : (2020) 11 KL CK 0168

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

Bench : Single Bench

Advocate : M.A. Ahammad Saheer, Renjith. T.R.

Final Decision : Allowed

Judgement

1. This Bail Application filed under Section 439 of Criminal Procedure Code (Cr.P.C.) was heard through Video Conference.
2. The Petitioner is the 2nd accused in Crime No.331 of 2020 of Sreekandapuram Police Station, Kannur District. The above case is registered against the petitioner and others alleging offences punishable under Sections 376, 376(D), 376(2)(n), 506(i) r/w. Section 34 of the Indian Penal Code (IPC).
3. The prosecution case is that, on 26.09.2020, while the defacto complainant was returning to her residence, the 1st accused took her in his motor bike to a shed and committed rape on her. Thereafter, the petitioner and the other accused committed rape on her. The petitioner was arrested on 27.09.2020.
4. Heard the learned counsel for the petitioner and the learned public prosecutor.

5. The learned counsel for the petitioner submitted that, even if the entire allegations are accepted, no offence is made out in this case. The counsel submitted that, the admitted prosecution case is that, the victim voluntarily accompanied the 1st accused in a motor bike to a shed. Thereafter, the 1st accused committed rape on the victim. Subsequently, the other accused also committed rape on the victim. This the sum and substance of the allegation in the F.I.statement. The Counsel submitted that, even if we accept the F.I.statement, there is no offence under Section 376 IPC is made out. The counsel submitted that, the petitioner is in custody about 60 days. The counsel submitted that, the petitioner is ready to abide any conditions if this Court is granting him bail.

6. The learned Public Prosecutor opposed this bail application. The public prosecutor submitted that, the allegation against the petitioner and others is that, there was a gang rape by them on the victim. But the public prosecutor conceded that the investigation in this case is over and the final report was filed on 27.10.2020. Now the case is pending before the committal court as C.P.No.52 of 2020.

7. After hearing both sides, I think, this bail application can be allowed on stringent conditions. Of course, the allegation against the petitioner is very serious. But now the investigation is over and the final report is filed and the matter is pending as C.P.No.52 of 2020 before the Judicial First Class Magistrate Court, Thaliparamba. Considering the fact that the petitioner is in custody from 27.09.2020, 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 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 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. The petitioner shall not leave India without permission of the jurisdictional Court;
4. The 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.