

(2020) 11 KL CK 0008
In the High Court Of Kerala
Case No : Bail Application No. 7676 Of 2020

Noorudeen Koya	Vs	APPELLANT
State Of Kerala And Anr		RESPONDENT

Date of Decision : 18-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 354
Protection Of Children From Sexual Offences Act, 2012 — Section 7, 8, 9(m), 10

Citation : (2020) 11 KL CK 0008

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

Bench : Single Bench

Advocate : M. Kiranlal, R. Rajesh, Manu Ramachandran, Sameer M Nair, T.S. Sarath, Renjith. T.R.

Final Decision : Allowed

Judgement

1. This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.
2. Petitioner is the accused in Crime No.2572/2020 of Eravipuram Police Station. The above case is registered against the petitioner alleging offences punishable under Section 354 IPC and Section 7 r/w Section 8, and Section 10 r/w Section 9(m) of the Protection of Children from Sexual Offences Act.
3. The prosecution case is that on 10.10.2020 at 5.30 pm at the residence of the petitioner, the petitioner sexually abused a 7 year old minor girl, who is the victim in this case. The petitioner was arrested on 16.10.2020.
4. Heard the learned counsel for the petitioner and the learned Public Prosecutor.
5. The learned counsel for the petitioner submitted that the allegations against the petitioner are false. It is a false case foisted against the petitioner. According to the counsel, the relatives of the victim attacked the petitioner on 10.10.2020 and he was admitted in the hospital. Annexure 2 is the discharge summary from

the hospital. The counsel submitted that subsequently apprehending a case against the parents of the victim, a false case is foisted against the petitioner. The counsel submitted that he already preferred a complaint before the police authorities. The counsel submitted that it is a false case foisted against the petitioner, misusing the provisions of the POCSO Act.

6. The Public Prosecutor very seriously opposed the bail application. The Public Prosecutor submitted that at this stage this Court need not disbelieve the statement of the victim girl, who is only aged 7. The Public Prosecutor submitted that the petitioner is aged 68. The Public Prosecutor submitted that the statement of the victim girl is believable and prima facie offence is made out.

7. After hearing both sides, I think, this bail application can be allowed on stringent conditions. Admittedly, the petitioner was arrested on 16.10.2020. The petitioner is in custody for the last one month. The maximum punishment that can be imposed for the offences alleged against the petitioner is only upto seven years. I don't want to make any observation about the merit of the case. It is true that at this stage the statement given by the victim girl need not be disbelieved. But the defence set up by the petitioner is also to be investigated by the investigating officer.

As I said earlier, I don't want to make any observation about the merit of the case. Considering the entire facts and circumstances of the case and considering the fact that the petitioner is in custody from 16.10.2020 onwards, I think, this bail application can be allowed.

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. 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. The petitioner shall not enter the jurisdiction limit of Eravipuram Police Station till the final report is filed.

7. The petitioner shall appear before the investigating officer on all Mondays at 10 am. For the purpose of appearance, the petitioner can enter the jurisdiction limit of Eravipuram Police Station.

8. 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.