

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2020 / 8TH ASWINA, 1942

Bail Appl..No.6006 OF 2020

CRIME NO.755/2020 OF Kasaragod Police Station , Kasargod

PETITIONER/S:

SREEJITH S
AGED 20 YEARS
SON OF SURESH KUMAR,
RESIDING AT SREE NILAYAM,
SHANTHI NAGAR, KARANTHAKKAD,
KASARAGOD DISTRICT.
PIN-671121

BY ADVS.
SRI.T.MADHU
SMT.C.R.SARADAMANI

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM - 682031
- 2 THE STATION HOUSE OFFICER
KASARAGOD POLICE STATION, KASARAGOD DISTRICT.
671121

OTHER PRESENT:

SRI.RENJITH.T.R., PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
30.09.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

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

2. The Petitioner is the accused in Crime No.755/2020 of Kasaragod Police Station, Kasaragod District. The above case is registered against the petitioner, alleging offences punishable under Sections 354A(i) of the Indian Penal Code and section 7 read with 8 of the POCSO Act 2012.

3. The prosecution case is that, the petitioner committed sexual offences against the victim, who is aged only 14 years.

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

5. The learned counsel for the petitioner submitted that, the only non-bailable offence alleged against the petitioner is under Section 7 and 8 of the POCSO Act. The learned counsel for the petitioner submitted that, the maximum punishment that can be imposed as per the

above Sections are only 5 years. The learned counsel for the petitioner submitted that, in such circumstances, the petitioner is entitled the Full Bench decision of this Court. The learned counsel for the petitioner also submitted that, the petitioner and the family of the victim are neighbors. The learned counsel for the petitioner submitted that, the allegations against the petitioner are not correct.

6. The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor submitted that, there is clear statement from the victim that, the petitioner committed the offence. The learned Public Prosecutor submitted that, this Court may not release the petitioner, under Section 438 of Cr.P.C.

7. After hearing both sides, I think this bail application can be allowed on stringent conditions. The only non-bailable offence alleged against the petitioner is under Section 7 and 8 of the POCSO Act. The maximum punishment that can be imposed as per the above Sections is 5 years.

8. Admittedly, the petitioner is a neighbor to the victim girl. Therefore, while granting bail, there can

be a direction to the petitioner, not to enter the jurisdiction limit of Kasargod Police Station for a period of two months, except for the purpose of appearing before the Investigating Officer in connection with the investigation of the case. Considering the entire facts and circumstances of the case, I think this bail application can be allowed on stringent conditions.

9. 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.

10. 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.

11. 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 him from disclosing such facts to the Court or

to any police officer.

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

5. 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.

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. The petitioner shall not enter the jurisdiction limit of Kasargod Police Station for a period of two months, except for the purpose of appearing before the Investigating Officer in connection with the investigation of this case.

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.

Sd/-

P.V.KUNHIKRISHNAN

JUDGE