

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 24TH DAY OF AUGUST 2020 / 2ND BHADRA, 1942

Bail Appl..No.652 OF 2020

AGAINST THE ORDER/JUDGMENT IN CRMC 82/2020 DATED 22-01-2020 OF  
DISTRICT COURT & SESSIONS COURT, ERNAKULAM

CRIME NO.6/2020 OF KALAMASSERY POLICE STATION, ERNAKULAM

PETITIONER/S:

AMAL SHA  
AGED 20 YEARS  
S/O. SHAJI,  
PUNNAKKAPARAMBIL HOUSE,  
ADIMALY P.O, ADIMALY,  
IDUKKI DISTRICT

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT/S:

- 1 STATE OF KERLA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM 682 031
- 2 COMMISSIONER OF POLICE,  
COCHIN CITY POLICE, ERNAKULAM 682 031
- 3 STATION HOUSE OFFICER,  
KALAMASSERY POLICE STATION,  
ERNAKULAM 682 021
- 4 STATION HOUSE OFFICER,  
TOWN NORTH POLICE STATION,  
ERNAKULAM 682 018

OTHER PRESENT:

SRI.RENJITH.T.R., PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
24.08.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J.**

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**B.A.No. 652 of 2020**

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**Dated this the 24<sup>th</sup> day of August, 2020**

**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. 6 of 2020 of Kalamassery Police Station, Ernakulam District. The above case is originally registered under Section 57 of Kerla Police Act. Subsequently converted as an offence punishable under Section 376 read with Section 34 of the Indian Penal Code (IPC).

3. The prosecution case is that, the petitioner committed rape on the victim in room No. 8 of Kripa Annex, Ernakulam North at 5 p.m. on 11.10.2019, against her consent with the help of accused Nos. 2 to 4 and

thereby committed the offences.

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

5. The learned counsel for the petitioner submitted that, the petitioner and the victim girl were in love. The case is registered due to a misunderstanding of the father-in-law of the victim girl. The learned counsel for the petitioner submitted that, the father-in-law of the victim girl, who is the defacto complainant in this case filed an affidavit before this Court saying that, the marriage of petitioner and the victim girl is already decided. Annexure-A6 is the affidavit. The victim girl is also filed an affidavit as Annexure-A5, in which she says that, she has no objection in quashing the proceedings. The learned counsel submitted that, Annexures A5 & A6 are the copy of the affidavit of the father-in-law and the victim in this case. The counsel submitted that, the petitioner is taking steps to quash the proceedings. He is

waiting for a statement of the victim. As per Annexure-A7 lower court dismissed the application for getting the statement. Subsequently, as per Annexure-A8, this Court directed to issue the statement to the petitioner. Immediately after getting the statement of the victim, the petitioner will file a petition to quash the proceedings. The learned counsel for the petitioner submitted that, in the mean while, if the petitioner is arrested, it will be on injustice.

6. The learned Public Prosecutor even though opposed the bail application, submitted that, if this Court grant him bail stringent conditions may be imposed. He submitted that, the victim girl gave a statement under Section 164 of Cr.P.C., in which the offence is made out *prima facie*.

7. After hearing both sides, I think this bail application can be allowed on stringent conditions. Admittedly, there is a love affair between the petitioner

and the victim girl. Petitioner produced a copy of the affidavit of the defacto complainant and the victim girl, saying that, the petitioner is going to marry the victim girl. Marriage will not wipe off the offence. But considering the facts and circumstances of this case, 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 appear before the Investigating Officer within ten days from today and shall undergo interrogation;*

*2. After interrogation, if the Investigating Officer proposes to arrest the petitioner, they 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. *The petitioner shall not leave India without permission of the Court;*

5. *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;*

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.*

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**

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