IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 16TH DAY OF DECEMBER 2020 / 25TH AGRAHAYANA, 1942

Bail Appl..No.8341 OF 2020

PETITIONER:

RAJAN
AGED 56 YEARS
SON OF RAMAN,
PANDARI HOUSE, NOOLUVALLY DESOM, MATTATHOOR VILLAGE,
VILLIKULANGARA, THRISSUR
PIN-680684

BY ADV. SHRI.ABRAHAM MATHAN

RESPONDENT:

1 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM,
PIN-682031

XXXXAGEDXXXX YEARS XXX

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SRI.RENJITH.T.R., PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.8341 of 2020

Dated this the 16th day of December, 2020

O R D E R

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.948 of 2020 of Vellikulangara Police Station, Thrissur. The above case is registered against the petitioner alleging offences punishable under Sections 447, 376(2)(f) and 376(3) IPC and Section 4(2) r/w. Section 3(b)(d), Section 6(l) r/w. Section 5(n) and Section 8 r/w. Section 7 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act') is also alleged.

3. The prosecution case is that the petitioner who is the maternal uncle of the victim, who is a minor girl aged 13 years, committed raped on her by trespassing into the ancestral property of the victim on 13.10.2020. The petitioner was arrested on 2.11.2020.

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

5. The counsel for the petitioner submitted that this is a false case foisted against the petitioner. No such incident happened as alleged by the prosecution. The counsel submitted that the petitioner is ready to abide any conditions, if this Court grant him bail.

6. The Public Prosecutor seriously opposed the bail application. The Public Prosecutor submitted that the allegation against the petitioner is very serious and he committed rape on a minor girl aged 13. The Public Prosecutor submitted that the petitioner is aged 56 years and the victim is aged 13 years. The allegation is that he committed offence under Section 376(3) IPC. The Public Prosecutor submitted that this Court may not release the petitioner on bail at this stage.

7. After hearing both sides, I think this is not a fit case in which the petitioner can be released on bail at this stage. Very serious allegations are raised against the petitioner. The petitioner is the maternal uncle of the victim. He is aged 56

years. The victim in this case is aged 13 years. I do not want to make any observation about the merit of the case.

8. Considering the entire facts and circumstances of the case, I think the petitioner is not entitled bail at this stage.

9. Moreover, the jurisdiction to grant bail has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in **Chidambaram P v Central Bureau of Investigation (AIR 2019 SC 5272)**. The apex court held that, the following factors are to the taken into consideration while considering the application for bail.

> (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;
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> (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;
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> (iii) reasonable possibility of securing the presence of the accused at the time of trial or

the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

It is true that there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be decided on the basis of the facts and circumstances of that case. In the light of the general principles laid down in the above judgment and considering the facts and circumstances of this case, I am of the opinion that this is not a fit case in which the petitioner can be released on bail. Hence this Bail Application is dismissed.

SD/-

cms **P.V.KUNHIKRISHNAN, JUDGE**