IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 18TH DAY OF DECEMBER 2020 / 27TH AGRAHAYANA, 1942

Bail Appl..No.8833 OF 2020

CRIME NO.1002/2020 OF NEDUMBASSERY POLICE STATION , Ernakulam

PETITIONER/ACCUSED:

ANOOP VIJESH NAIR
AGED 44 YEARS
ASHIRVAD VEEDU, UDAYANAPURAM.P.O,
PADINJARE MURI, VAIKOM
KOTTYAM, PIN-686143

BY ADVS.
SRI.GOPALAKRISHNA KURUP
SHRI.ASHRUTH NASER
SMT.ANUROOPA JAYADEVAN

RESPONDENT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA 682031

R1 BY SRI.AJITH MURALI, PP.

OTHER PRESENT:

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JUDGMENT

Dated this the 18th day of December 2020

O R D E R

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.1002/2020 of Nedumbassery Police Station, Ernakulam District. The above case is registered alleging offences punishable under Sections 370 and 376(2)(n)of the Indian Penal Code (IPC). The victim in this case is a lady aged 43 years.

3. The prosecution case is that the petitioner and the victim girl became friends during 2016. According to the victim, the petitioner and the victim used to contact over phone regularly. She says that on 26.11.2016, the petitioner reached the house of the defacto complainant. From there , it is alleged that the petitioner had sex with the victim. According to the victim, she gave consent because there was a

promise to marry. Subsequently, in December, in the same year, there was sexual intercourse. According to the victim, subsequently also there was regular contact between the petitioner and the victim. Now the victim came to know that the petitioner married another girl. Hence, the complaint is filed alleging offence under Sec.376 IPC.

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

5. The learned Senior counsel for the petitioner submitted that, even if the entire allegations are accepted, the offence is not made out. The learned Senior counsel submitted that, the crux of the prosecution case is that, there is a promise to marry and there is sex. According to the prosecution, the consent was given for sex because there was promise to marry. The Senior counsel relied on judgment of the Apex court in ***Dhruvaram Murlidhar Sonar vs. State of Maharashtra and others [2019 (1) KHC 403 and Pramod Suryabhan Pawar vs. State of Maharashtra and another (2019 KHC 6829)***

6. The learned Senior counsel submitted that, the offence is not *prima facie* made out. The learned Senior counsel submitted that the alleged incident happened in 2016 and the complaint is filed after about four years in 2020. The counsel submitted that no case is *prima facie* made out against the petitioner and this Court may grant bail under Section 438 Cr.P.C.

7. The learned Public Prosecutor opposed the bail application. But the learned Public Prosecutor submitted that if this Court is granting bail, stringent conditions may be imposed.

8. After hearing both sides, I think this bail application can be allowed on stringent conditions. The admitted case of the victim is that, the alleged rape happened in 2016, the complaint is filed in 2020. According to the victim, she gave consent for sex because there was promise to marry from the side of the petitioner. I don't want to make any observation about the merit of the case. These are matters to be investigated by the Investigating Officer. But, 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 proposes 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. 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;

7. 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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