

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 23RD DAY OF NOVEMBER 2020 / 2ND AGRAHAYANA, 1942

Bail Appl..No.7754 OF 2020

CRIME NO.1438/2020 OF Pangode Police Station ,  
Thiruvananthapuram

PETITIONER/ACCUSED:

PRADEEPKUMAR,  
AGED 44 YEARS, S/O.BHASKARAN,  
PONGUVILA VEEDU, MATHIRA, MANKODE,  
KOLLAM DISTRICT-691559.

BY ADV. SRI.P.ANOOP (MULAVANA)

RESPONDENT:

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

SRI.RENJITH.T.R., PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
23.11.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**O R D E R**

**Dated this the 23rd day of November 2020**

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the accused in Crime No.1438/2020 of Pangode Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 323, 506(i), 376, 376(2)(n), 376C(b) of IPC.

3. The prosecution case is that the accused is a Junior Health Inspector working at Kulathupuzha Community Health Centre. The prosecutrix in this case was working at Malappuram as a Home Nurse. It is the case of the victim that on 30.8.2020, she contacted the Health Inspector and C.I Kulathupuzha for her inter district arrival at Kulathupuzha during this pandemic period. On 31.8.2020 she reached her house at Kulathupuzha and contacted the Health Inspector regarding her arrival. On the next day she was tested Covid-19 negative and she called the Health Inspector for getting her Covid-19 negative certificate. As advised by the accused, she went to the residence of the accused at Chettakadumukku of Barathannur in Pangode Village. While so, it

is alleged that the accused assaulted the victim and pushed her down. It is alleged that the accused tied both hands of the victim at her back and mouth was blocked with a dothi. Then her both legs were tied together and the other end of the same tied at the cot and thereafter accused raped her. It is alleged that subsequently the petitioner removed the cloth from her mouth and threatened her that if the matter is divulged to anybody, she has to face consequences. This is the sum and substance of the allegation in the first information statement given by the victim.

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

5. The petitioner filed two bail applications before this Court. The first bail application was dismissed by this Court on 17.9.2020. Actually on that date I was not inclined to grant bail to the petitioner because of the serious averments in the first information statement given by the victim against the petitioner. In such a situation, the learned counsel for the petitioner requested for withdrawing the bail application. That prayer was allowed. Thereafter, again the petitioner filed a bail application before this Court and that was also withdrawn on 9.11.2020. On that day also I was not inclined to grant bail because of the seriousness of the case.

6. Now the petitioner produced an affidavit of the victim, which is produced as Annexure A4. It is an affidavit attested by a notary. In the affidavit it is stated like this:

"3. ടി നമ്പർ കേസ് ബന്ധുക്കളുടെ പ്രേരണയെ തുടർന്ന് അപ്പോഴത്തേ മാനസികാവസ്ഥയിൽ പ്രതിക്കേതിരെ കൊടുക്കുവാൻ ഇടയായിട്ടുള്ളതും, ഞാനും പ്രതിയും തമ്മിൽ പരസ്പരം സമ്മതപ്രകാരമാണ് ലൈംഗികമായി ബന്ധപ്പെട്ടിട്ടുള്ളതും. ടി നമ്പർ കേസ് പ്രതിക്കേതിരെ എനിക്ക് തുടരുവാൻ താൽപ്പര്യമില്ലാത്തതും ആയതിൽ യാതൊരുവിധ പരപ്രേരണയൊ മറ്റൊ ഇല്ലാത്തതുമാണ്. ടി നമ്പർ കേസിൽ പ്രതിക്ക് ജാമ്യം നൽകുന്നതിനും, ടി നമ്പർ കേസ് ഒത്തുതീർപ്പാകുന്നതിനും എനിക്ക് യാതൊരു വിധ തടസ്സങ്ങളും ഇല്ലാത്തതുമാകുന്നു."

7. I am surprised, after reading this affidavit. The registration of the above case was widely covered by the media in the State. Almost all the people in Kerala knows about this case. The allegation is that a Health Inspector committed rape on a lady when she approached him for getting certificate for Covid-19 negative. After reading the first information statement given by the victim, this Court also refused bail to the petitioner because the allegation in the statement was so serious. She even stated that her both hands were tied at her back and the mouth was blocked with a dothi. Thereafter there was a forceful rape. Now this victim is deposing before this Court in a notary attested affidavit that there is no such incident and it was a concensual

sexual intercourse. It is stated in the affidavit that she gave such a statement to the police because of the pressure from her relatives.

8. It is an admitted fact that the petitioner is in custody for the last 77 days. If the averments in the affidavit of the victim is accepted, the petitioner is in illegal custody for the last 77 days. This should be taken very seriously. Nobody should make such false complaint against a person. The petitioner was working as a Junior Health Inspector. Hundreds and hundreds of health workers are working in the State against the pandemic Covid-19. In such a situation, this particular incident gave a black mark to the health workers in the State. It even affected their morale. Now this victim is coming before this Court and saying that it was a consensual sexual intercourse and there was no forceful sex as stated in the FI statement. The personal liberty of a citizen is his fundamental right under Article 21 of the Constitution of India. This is a fit case in which the petitioner should be released on bail forthwith. Not only that, according to me, the contents of the affidavit is to be looked into by the Director General of Police of the State and take appropriate action in accordance to law against the alleged victim or relatives of the victim in accordance to law. If sexual intercourse was with

the consent of a lady, no prima facie case is made out. Admittedly the victim in this case is major. Of course, the action of the petitioner may not be acceptable morally but that is not a reason to punish him like this. The allegation in the first information statement in this case tarnished the image of health workers in the state. If anybody is responsible for the same, the law of the land should act swiftly.

9. Considering the entire 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. 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.

Registry will forward a copy of this order to the Director General of Police. The Director General of Police will authorise a senior officer to conduct an enquiry on Annexure A4 affidavit. Thereafter, the Director General of Police will take appropriate action based on that report in accordance to law. I don't want to make any observation about the merit of the case. The criminal justice delivery system cannot go like this. Based on a false complaint, a person is in jail for about 77 days. This Court cannot shut its eye in such situations. The Director General of Police should take this case very seriously and do the needful and file a report based on the enquiry before the Registrar General of this Court within three months. I make it clear that, the enquiry officer will conduct the enquiry untrammelled by any observations in this order.

**Sd/-**

**P. V. KUNHIKRISHNAN**

**JUDGE**

**ab**