

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 15TH DAY OF MAY 2020 / 25TH VAISAKHA, 1942

BA NO.1853 OF 2020

(Crime No:281/2020 of Sasthamcottah Police Station in
Kollam District)

Petitioner/ Accused:

Biju B., S/o.Balakrishnan, Aged 23 Years,
Charuvila Puthen Veedu, Thuruthikkara P.O.,
Kunnathoor Taluk, Kollam.

By Adv. Sri. B.Mohan Lal.

Respondents/Complainant

1. State of Kerala Rep. by the Public Prosecutor, High Court of Kerala, Ernakulam-682 031.
2. The Station House Officer,
Sasthamcottah Police Station, Kollam -690 521.

By P.P. Sri.B.JAYASURYA (SR) & C.K.PRASAD

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
15.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A.No.1853 of 2020

Dated this the 15th day of May, 2020

O R D E R

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

2. Petitioner is the sole accused in Crime No.281 of 2020 of Sasthamcottah Police Station, Kollam registered alleging offences punishable under Sections 294(b), 323 and 354 IPC.

3. The prosecution case is that on 15.2.2020 at about 7 pm, while the defacto complainant and her children were returning back after attending the temple festival of Malanada Temple she happened to see the petitioner, who is his neighbour. The petitioner asked about the details of the neighbour Smt.Sabitha, she refused to answer the same. Then the petitioner forcibly pulled her abdomen and private parts of her body. She forcibly pulled the petitioner back and informed the matter to her husband. There arose some quarrel with the petitioner and the

husband of the defacto complainant. The petitioner shouted with obscene words. On the basis of the FI statement given by the defacto complainant, the present case is registered.

4. The counsel for the petitioner submitted that, even if the entire allegations are accepted, no offence under Section 354 IPC is made out which is the only non bailable offence, alleged in this case. Moreover he also submitted that, there is a delay of four days in filing the complaint. He also submitted that, the petitioner is ready to abide by any condition, if this Court is granting bail to him.

5. The learned Public Prosecutor submitted that, if this Court is granting bail to the petitioner, stringent conditions may be imposed.

6. Admittedly, there is a delay of four days in submitting the complaint. Of course, this is a matter to be investigated and the prosecution can explain the same at the appropriate stage. There is no serious injuries sustained in this case. The allegation includes Sections 323 and 354 IPC. The intention to commit the offence under Section 323 IPC and the intention to commit the offence under Section 354 IPC are different. Anyway, these are

matters to be investigated by the police. I make these observations only for the purpose of considering this bail application. Considering the facts and circumstances of the case, I think this bail application can be allowed.

7. 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.

8. 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.

9. 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 as and when required. The petitioner shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.
4. 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 declared lock-down.

5. 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.

**P.V.KUNHIKRISHNAN
JUDGE**

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