

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 06TH DAY OF MAY 2020 / 16TH VAISAKHA, 1942

B.A.NO.1947 OF 2020

Crime No.55 of 2020 of the Vellarikundu Police Station, Kasaragod

Petitioner/ Accused :-

Shyju Antony Areekal @ Shyju Palladi,  
aged 32 years, son of Antony, residing at Pallady, Malom village,  
P.O. Chully, Vellarikundu Taluk, Kasaragod District.

By Adv. Sri.Ramprasad Unni.T.  
SRI.S.M.PRASANTH

Respondents/State & Complainant:-

1. State of Kerala represented by the Public Prosecutor, High Court of Kerala, Ernakulam, Kochi – 682 031.
2. The Station House Officer, Vellarikundu Police Station,  
Vellarikundu – 671 533, Kasaragod District. .

BY PUBLIC PROSECUTOR SRI.AJITH MURALI & SRI.SANTHOSH PETER(SR)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON  
06.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

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B.A.No.1947 of 2020  
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Dated this the 6<sup>th</sup> 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 accused in Crime No.55 of 2020 of Vellarikkundu Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 323, 354 and 452 of the Indian Penal Code.

3. The prosecution case is that, on 16.2.2020 at about 8.30 pm., the petitioner had committed trespass upon the residential house of the victim at Kaneervadi and used criminal force by kissing and pressing her breast and thereby outraged her modesty and assaulted her minor child.

4. The senior counsel for the petitioner submitted that the non-bailable offences in this case are under Sections 354 and 452 of the IPC. According to the senior counsel, no ingredients of Section 452 of IPC is made out in this case. Moreover, the

senior counsel for the petitioner also submitted that Section 323 IPC and Section 354 IPC will not go together.

5. The learned Public Prosecutor opposed the bail application saying that serious allegations are raised against the petitioner.

6. After hearing both sides, according to me, this bail application can be allowed. As stated by the senior counsel for the petitioner, it is difficult to find out the ingredients of Section 452 of IPC at this stage. Any way, this is a matter to be decided at the time of trial. Moreover, as contended by the learned senior counsel for the petitioner, Section 323 IPC and Section 354 of IPC may not go together because the ingredients of Section 323 IPC and ingredients of Section 354 IPC are different.

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 on 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 with law, even though the bail is granted by this Court.

**P.V.KUNHIKRISHNAN, JUDGE**