

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.1951 OF 2020

Crime No: 51/2020 of Valiyamala Police Station.

Petitioner/ Accused:

Muhammed Shah, S/o Jamaludheen, aged 27 yeasers,
Puthenkarikkathil Veedu, Vanchuvam,
Chullimanoor P.O., Nedumangad

By Adv.Latheesh Sebastian

Respondents/State & Complainant:

1. State of Kerala, Represented by
Public Prosecutor, High Court of Kerala, Ernakulam – 682 031.
2. Station House Officer,
Valiyamala Police Station, Valiyamala P.O,
Thiruvananthapuram – 695547

BY P.P.SRI.AJITH MURALI & 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

B.A.No.1951 of 2020

Dated this the 6th 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. 51 of 2020 of Valiyamala Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 294 (b), 308, 323, 324, 354, 427, 452 of the Indian Penal Code (IPC) and Section 75 of the Juvenile Justice (Care and Protection of Children) Act.

3.The prosecution case is that due to enmity, the petitioner trespassed into the house of the defacto complainant at about 2.00p.m., on 05.02.2020, and

voluntarily cause hurt by using a plastic chair. It is alleged that the sister-in-law of the defacto complainant attempted to save the defacto complainant. The petitioner assaulted the sister-in-law by holding her breast and pushed her to the corner of the room. When the children of the defacto complainant attempted to save her, the petitioner assaulted the children. Hence, the petitioner committed the offence.

4. The counsel for the petitioner submitted that the defacto complainant is the wife of the elder brother of the petitioner with whom there is some dispute. There is a family dispute according to the petitioner. He submitted that he is ready to comply any conditions, if this Court grant bail.

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

6.The offences alleged includes Sections 323, 308

and 354 IPC. I don't know how Section 323 and 324 IPC on one side and Section 354 IPC on the other side will together. Moreover, the offence happened at 2.00 p.m. and the petitioner and the injured are relatives. Considering the facts and circumstances of this case, I think this 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