

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 11TH DAY OF MAY, 2020 / 21ST VAISAKHA, 1942

B.A.No.1962 /2020

(Crime No. 115 of 2020 of Marayamuttam Police Station,
Thiruvananthapuram District)

Petitioner /Petitioner :

Suresh, S/o Sreedharan, aged 63 years,
Residing at Melvilakathu Veedu, Maruthathoor,
Chaikottukonam, Marayamuttom, Neyyattinkara.
PIN – 695 124

BY Adv. Martin Jose

Respondents/Respondents :

1. The State of Kerala,
Represented by Public Prosecutor, High Court of
Kerala, Ernakulam - 682 031
2. The Station House Officer,
Marayamuttom Police Station,
Thiruvananthapuram District, PIN - 695 124

SRI. AJITH MURALI, PP
SRI. SANTHOSH PETER SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.1962 of 2020

Dated this the 11th 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 1st accused in Crime No.115 of 2020 of Marayamuttom Police Station registered alleging offences punishable under Sections 292(b), 323, 324, 326, 307 read with 34 of IPC.

3.The prosecution case is that the defacto complainant filed complaint against the Service Co-operative Bank, Marayamuttom and the accused who got agitated with such complaint, in furtherance of common intention, on 30.2.2020 at about 4.30 pm came in front of the bank, to do away with the defacto

complainant, the 3rd accused abused him in filthy language and shouted to kill the complainant. Different overt acts are mentioned against the other accused also in the First Information Statement. According to the prosecution, the petitioner and other accused committed the offence. The learned senior counsel appearing for the petitioner in this case submitted that the petitioner has not committed any offence. According to the learned senior counsel, the case of the defacto complainant in the First Information Statement and the case of the prosecution in the remand report filed before the court for remanding accused No.3 and 4, is entirely different. According to the learned senior counsel, not only the weapon of the offence, but the sequence of events and overt acts are also completely changed. According to the learned senior counsel, there is manipulation in registering the First Information Report. The learned senior counsel

also submitted that the petitioner is a person suffering from different illness. He is undergoing treatment in a hospital. He also submitted that he undergone Angiogram and Angioplasty.

4.The learned Public Prosecutor opposed the bail application. According to the Public Prosecutor, about 18 other crimes are registered against the petitioner. The Public prosecutor also submitted that the injuries sustained by the defacto complainant/injured is very serious. The injury includes a fracture of left transverse process of L1 and L2 vertebrae. The learned Public Prosecutor submitted that the petitioner is not entitled anticipatory bail, in the facts and circumstances of this case.

5. I considered the contentions of the petitioner and the Public Prosecutor. Simply because a person is involved in several other cases, bail cannot be denied to him, if, the facts of the case in which the bail

application is filed is not convincing to the court. It is a fact that the injured submitted the First Information Statement. The First Information Statement is produced along with the bail application. I perused the same. I also perused the remand report of 3rd and 4th accused. I perused the prosecution case narrated by the Investigating Officer in the remand report. As submitted by the learned senior counsel, there are several contradictions between the First Information Statement and the prosecution case narrated in the remand report. I don't want to make any comments above the same. It is a matter to be explained by the prosecution before the trial court. But, while considering the bail application under Section 438 Cr.PC, I have to peruse these documents. After, perusing these documents, at this stage, I think I can allow this bail application under Section 438 Cr.PC. I make it clear that the contradictions pointed out by the

learned senior counsel in the First Information Statement and the remand report is a matter to be explained by the Investigating Officer while submitting final report before the court. I also make it clear that, if final report is filed, the trial court has to decide the matter, untrammelled by any of the observation in this order. I consider this aspect only for the purpose of considering an application under Section 438 Cr.PC. In the facts and circumstances of this case, I think this bail application can be allowed.

6. 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.

7. 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.

8. 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.

6. The petitioner shall appear before the Investigating Officer on all Mondays and Fridays at 10.00am till final report is filed in this case. The petitioner shall not enter the jurisdiction limit of Marayamuttom Police Station except for the purpose of appearing before the Investigating Officer till the final report is filed in this case.

P.V.KUNHIKRISHNAN, JUDGE

ska