

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.2016 /2020

*(In Crime No. 284/2020 of Mannar Police Station, Alappuzha District)*

**Applicant (Accused)**

Rajan Nair, aged 45years,  
Thoppilchantha, Mannar, Alappuzha - 689622

By Adv. Sri. P.Thomas Geeverghese

**Respondents (State & Defacto Complainant)**

1.State of Kerala

Represented by Public Prosecutor,  
High Court of Kerala, Ernakulam - 682016

2.Mohammed Khani, aged 53years, S/o Veer Muhammed, Fathima  
Manzhil, Kurattissery Muri, Mannar, Alappuzha - 689622

R2 By Adv. Sri. R S Parameshwaran

R1 by 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.**

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B.A.No.2016 of 2020  
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Dated this the 11<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.284 of 2020 of Mannar Police Station registered alleging offences punishable under Sections 452, 323, 427 and 506 of the Indian Penal Code.

3.The prosecution case is that on 18.02.2020, at 1.30 pm, the accused trespassed into the chicken shop of the de facto complainant and threatened two person who came in the shop to collect chicken waste, aggrieved by insufficiency of chicken waste for his dogs and committed mischief.

4. The counsel for the petitioner submitted that the incident is not happened as alleged by the prosecution. Moreover, an affidavit is filed by the de facto complainant

stating that he has no objection in granting bail to the petitioner. He also submitted that the matter is settled. A counsel also appeared in this bail application on behalf of the de facto complainant and submitted that, what is stated in the affidavit is correct.

5. Simply because the matter is settled, this bail application cannot be allowed. But considering the fact that the offences alleged are only 452, 323, 427 and 506 of the Indian Penal Code and the fact that there is no serious objection from the learned Public Prosecutor, I think this bail application can be allowed. I also considered the submission made by the counsel for the de facto complainant that he has no grievance against the petitioner.

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 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**