

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.2018 OF 2020

(Crime No. 54/2020 of Chevayur Police Station, Kozhikode District)

**Petitioners/Accused Nos.5 & 6:**

1. Shameena, aged 39 years,  
D/o.Muhammed, Banglavin Thadathil,  
Kumaranallur, Mukkam.P.O.,  
Kozhikode, Pin-673 602.
2. Manoj.V.K., aged 45 years,  
S/o.Chathu, Vettikunnath House,  
Narikkuni.P.O., Kozhikode, Pin-673 585.

By Adv. Mathew Kuriakose

**Respondent/State:**

State of Kerala,  
(Crime No. 54/2020 of Chevayur Police Station),  
represented by the Public Prosecutor,  
High Court of Kerala, High Court. P.O.,  
Ernakulam - 682 031.

**BY P.P.SRIAJITH MURALI & SANTHOSH PETER(SR)**

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

**ORDER**

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

2. Petitioners are accused Nos.5 and 6 in Crime No.54 of 2000 of Chevayur Police Station registered alleging offences punishable under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

3.The prosecution case is that on 25.01.2020 at 6.00 a.m. a six year old boy by name Ajin was found laying unconscious at home for the Mentally Deficient Children (HMDC), Kozhikode and he was taken to Nirmala Hospital and thereafter to the Medical College hospital. At that time the child was declared dead. The petitioners were on night duty in the said institution on 24.01.2020 and hence the above case is instituted.

4. The counsel for the petitioners submitted that there are 13 rooms in the institutions, out of which 7 rooms are being used for purposes other than keeping children. There are 38 boys admitted in the institution. Therefore there is acute

scarcity of space to accommodate the children. There is no willful negligence on the part of the petitioners which warrants their prosecution pursuant to the alleged commission of the offence.

5. The learned Public Prosecutor submitted that there is supervisory lapses on the part of the petitioners.

6. After hearing both sides, I think this Bail Application can be allowed. Even according to the Prosecution there is only supervisory lapses. I do not think that any criminal offence is made out in this case at this stage. It is a matter to be investigated by the Investigating Officer. In any way, having regard to the facts and circumstances of the case and the facts submitted by the learned counsel for the petitioner, I think that 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 petitioners 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 petitioners, they 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 petitioners shall appear before the Investigating Officer as and when required. The petitioners shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

4. The petitioners 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 petitioners, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court.

**P.V.KUNHIKRISHNAN, JUDGE**

**pkk**