

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.2193 /2020

(Crime No. 203/2020 of Koyilandi Police Station, Kozhikode)

Petitioner/Accused

Sunilkumar K, ., aged 47
S/o Damodaran Nair,
Appurath Vayal House,
Kinalur P.O., Koyilandy
Taluk Kozhikode District
Advocate S.K.SAJU,

Respondent/Complainant

1. State of Kerala

Rep.by Public Prosecutor, High Court of
Kerala Ernakulam-682031

2. S.H.O. Koilandi Police Station, Kozhikode

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.2193 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 accused in Crime No.203 of 2020 of Koyilandi Police Station registered alleging offences punishable under Sections 354 and 354 A of the Indian Penal Code (IPC).

3.The prosecution case is that the petitioner is working as the Assistant Sub Inspector of Police in Koyilandy Police Station. On 10.02.2020, the petitioner, during the investigation of a crime registered at the instance of the de facto complainant against her husband under Sections 498 A and 406 of the Indian Penal Code went to her house and while recording the statement, attempted to tickle her feet, hands and neck with his pen and made sexually colored remarks on the de facto complainant and thereby committed the offence

alleged.

4. The counsel for the petitioner submitted that, even if the entire allegations are accepted, no offence under Section 354 of the IPC is made out. According to the Senior Counsel, who is appearing for the petitioner, even if the allegations in the complaint are accepted only an offence under Section 354 A IPC is made out which is a bailable offence.

5. The learned Public Prosecutor submitted that, a police officer is committing this act and this court may not entertain this bail application under Section 438 of the CrPC. But, the learned Public Prosecutor conceded that, Section 354 A of the IPC is bailable.

6. After hearing both sides, I think this bail application can be allowed. Even if the entire allegations of the de facto complainant in this case is accepted, only offence under Section 354 A of the Indian Penal Code is made out. Section 354 A of the IPC is a bailable offence. It is difficult at this stage to say that whether an offence under Section 354 IPC is made out. Prima facie I am of the opinion that, there is no assault or

criminal force alleged. I make it clear that, only for the purpose of considering this bail application I made such an observation. The investigation officer is free to investigate the case in detail and find out whether there is an offence under Section 354 IPC is also made out. But, at this stage, I think this bail application under Section 438 CrPC can be considered in the light of the fact that the averments in the complaint will make out only an offence under Section 354 A of the IPC. I once again make it clear that the investigating officer is free to investigate the matter and find out whether any other offence is made out in this case. In the facts and circumstances of the case, I think 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 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