

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 08TH DAY OF MAY, 2020 / 18TH VAISAKHA, 1942

B.A.NO.2490 /2020

( CRIME NO 1441/2012 OF CHADAYAMANGALAM POLICE STATION,  
KOLLAM DISTRICT)

PETITIONER/ 1<sup>ST</sup> ACCUSED

SHAJI. B @ FANTAM PYLI @ SHAJAHAN.  
AGED 36 YEARS, S/O BASHEERKUTTY,  
SAJNA MANZIL, AYANIKKATTUKONAM, MADAVOOR  
MURI, MADAVOOR VILLAGE  
PIN: 695602.

BY ADV. DARSAN SOMANATH ( D 244)

RESPONDENTS/ COMPLAINANTS

1. STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA  
ERNAKULAM, KOCHI- 682031.
2. INSPECTOR OF POLICE,  
KADAKKAL POLICE STATION,  
KOLLAM- 691536.

SRI. AJITH MURALI, PUBLIC PROSECUTOR  
SRI. SANTHOSH PETER SR.PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION  
ON 08.05.2020, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**P.V.KUNHIKRISHNAN, J.**

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B.A.No.2490 of 2020  
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Dated this the 8<sup>th</sup> day of May, 2020

**O R D E R**

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. The petitioner is the 1<sup>st</sup> accused in Crime No.1441/2012 of Chadayamangalam Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 457, 461, 380 and 411 read with Section 34 of the Indian Penal Code.

3. Now the case is pending as C.C.No.1123/2016 before the Judicial First Class Magistrate Court, Kadakkal (Temporary). The case was registered by the Chadayamangalam Police as Crime No.1441/2012.

4. The prosecution case is that, the petitioner after lurking house-trespass, committed theft.

5. The learned counsel for the petitioner submitted that the petitioner is in custody from 29.2.2020. The learned

counsel for the petitioner submitted that the bail was denied by the court below because he is involved in five other cases.

6. The learned Public Prosecutor opposed the bail application and submitted that the petitioner is a habitual offender and involved in four other cases. The cases are pending for trial before the court below. Therefore, the petitioner is not entitled for bail at this stage.

7. After considering the facts and circumstances of the case, I am of the opinion that, this is not a fit case, in which the bail can be granted.

8. The petitioner is involved in four other cases in addition to the present case. All the cases are charge sheeted alleging offences punishable under Sections 457, 461 and 380 read with Section 34 of the Indian Penal Code. Therefore, it is clear that all the cases are of similar nature. In some of the cases bail was granted to the petitioner in the crime stage and thereafter he absconded. Subsequently, he was arrested. In such circumstances, I am of the opinion that, this is not a fit case, in which the bail can be granted to the petitioner at this

stage.

9. Moreover, the jurisdiction to grant bail has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in **Chidambaram P v Central Bureau of Investigation (AIR 2019 SC 5272)** the following factors are to be taken into consideration while considering the application for bail.

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

It is true that there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be decided on the basis of the facts and circumstances of that case. In the light of the general principles laid down in the above judgment and considering the facts and circumstances of this case, I am of the opinion that this is not a fit case in which the petitioner can be released on bail. Hence this Bail Application is dismissed.

**P.V.KUNHIKRISHNAN, JUDGE**

skj