

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. 2661/2020

CRIME NO. 182/2020 OF CHAVAKAD POLICE STATION, THRISSUR RURAL

APPLICAN/ACCUSED NO.2.

ASHKAR, AGED 33 YEARS,
S/O.KOYA, THYPARAMBIL HOUSE,
EDAKAZHYUR, THRISSUR.

BY ADV. JOHNSON VARIKKAPPALLIL

RESPONDENT/COMPLAINANT:

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULUM.

2. THE SUB INSPECTOR OF POLICE,
CHAVAKAD POLICE STATION,
THRISSUR RURAL, THRISSUR-680506.

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. 2661 of 2020

Dated this the 11th day of May, 2020

ORDER

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

2. The petitioner is the 2nd accused in Crime No.182/2020 of Chavakad Police Station. The case is registered against the petitioner and the other accused alleging offences punishable under Sections 452, 323, 324 and 308 r/w 149 of the IPC.

3. The prosecution case is that, on 21.3.2020 at 12.30 am, the accused with common intention trespassed into the house of the defacto complainant and attacked the defaco complainant and his family members with dangerous weapons and caused grievous hurt.

4. The counsel for the petitioner submitted that no

serious injuries sustained to the injured. He also submitted that, this is a false case registered against the petitioner. According to the counsel for the petitioner, the injured is involved in 7 other criminal cases, and he is trying to implicate the petitioner in this case because of personal enmity. He submitted that the petitioner is ready to abide by any conditions.

5. The learned Public Prosecutor submitted that the injury sustained to the injured are minor and it is on the shoulder and back side of the body. The learned Public Prosecutor submitted that, if this Court is granting bail to the petitioner, stringent conditions may be imposed.

6. After hearing both sides, I think this bail application can be allowed. No serious injuries are sustained to the injured. Moreover, there is a case to the petitioner that, there is false implication by the injured, who is involved in about 7 other criminal cases. Involvement in other cases by the injured is not a reason to grant bail. But, considering the facts and

circumstances of the case, and the minor injury sustained to the injured, it is difficult to decide at this stage whether an offence under Section 308 of the IPC is made out. So, in the facts and circumstances of the case, I think, bail can be granted.

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 **Writ Petition(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 proposes 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.

P.V.KUNHIKRISHNAN, JUDGE

MMG