

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 13TH DAY OF MAY 2020 / 23RD VAISAKHA, 1942

BA NO.2671 OF 2020

(Crime No. 105 /2020 of Nileswaram Police Station, Kasaragod district)

Petitioners/ Accused :-

1. Ashraf, aged 30 Years  
S/o Abdul Azeez,  
@Kottappuram, Nileshtar Village,  
Neeleswaram, Kasaragode.
2. Abdul Azeez, ags 50 Years,  
@Kottappuram, Nileshtar Village,  
Neeleswaram, Kasaragode

By Senior Adv. Ramesh Chander, Sanjeetha.K.A, Balu Tom  
Cheruvally  
Bejoy Joseph P J & Bonny Benny

Respondents/State & Complainant:-

1. State of Kerala represented by the Public Prosecutor, High Court of Kerala, Ernakulam, Kochi – 682 031.
2. The Station House Officer, Nileswaram Police Station, Kasaragod district

By P.P. Sri.B.Jayasurya (Sr) & Sri. C.K.Prasad

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON  
13.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

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**B.A.No. 2671 of 2020**  
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**Dated this the 13<sup>th</sup> day of May, 2020**

**ORDER**

The petitioners are the accused in Crime No.105/2020 of Neeleswaram Police Station. The above case is registered against the petitioners alleging offences punishable under Sections 341, 323, 354 r/w Section 34 of the Indian Penal Code.

2. The prosecution case is that on 29.02.2020, the defacto complainant visited the 1<sup>st</sup> petitioner, who was working in his establishment in gulf. Thinking that she had come to disrupt the marriage of the 1<sup>st</sup> petitioner, the petitioners herein wrongfully restrained her and beat her with hands and also outraged her modesty. Hence, it is alleged that, petitioners committed the offence.

3. The learned counsel for the petitioners submitted

that, there is some money transaction between the petitioners and the defacto complainant. The incident is not happened as alleged.

4. The learned Public Prosecutor submitted that the offences includes Sections 341, 323, r/w Section 34 IPC along with Section 354 IPC. The Public Prosecutor submitted that the incident happened according to the prosecution in a spur of the moment. Anyway, the learned Public Prosecutor submitted that, if this Court is granting bail, stringent conditions may be imposed.

5. After considering the facts and circumstances of the case, this bail application can be allowed. There was some money transaction between the petitioners and the defacto complainant. Moreover, the offences alleged are under Sections 341, 323 and 354. The only nonailable offence is under Section 354 IPC. When Section 323 IPC is there, I don't know whether Section 354 IPC is attracted. I make this observation only for considering the bail application. I make it clear that, the Investigating Officer is free to investigate the

case in detail. Anyway, I think this bail application can be allowed.

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 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 cooperate 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.

Sd/-

**P.V.KUNHIKRISHNAN,  
JUDGE**

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