

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.2688 OF 2020

(Crime No.501 of 2020 of Kodakara Police Station coming within the Jurisdiction of Judicial Magistrate of the 1st Class, Irinjalakuda, Thrissur District)

Petitioner/Sole Accused:

Madhavan, aged 75, S/o.Ayyappan, Mullakkuzhi House, Anathadam Desom, Koadakara Village, Chalakudy Taluk, Thrissur District

Adv.Bitto.N.L.

State of Kerala/Complainant

1. The State of Kerala, rep. by the Public Prosecutor, High court of Kerala at Ernakulam.
2. Sub Inspector of Police, Kodakara Police Station, Kodakara P.O., Thrissur 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.

B.A.No. 2688 of 2020

Dated this the 13th day of May, 2020

ORDER

The petitioner herein is the sole accused in Crime No.501/2020 of Kodakara Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 354 of the Indian Penal Code.

2. The prosecution case is that on 05.04.2020 at about 5.45 p.m., the petitioner grabbed the defacto complainant from behind and attempted to outrage her modesty.

3. The learned counsel for the petitioner submitted that the petitioner is aged 75 years. There was a money dispute between the petitioner and the defacto complainant. The dispute was settled as per Anx.A2 agreement, by which the defacto complainant agreed to pay the amount on or before 18.04.2020. But, thereafter, on 18.04.2020 the defacto

complainant submitted the present complaint alleging offence under Section 354 IPC against the petitioner. The petitioner also submitted that Crime No.502/20 is also pending against the defacto complainant for prosecution under Section 420 IPC. Anx.A3 is the FIR.

4. The learned Public Prosecutor submitted that, there is some financial transaction between the petitioner and the defacto complainant. If this Court is granting bail, the learned Public Prosecutor submitted that, stringent conditions may be imposed.

5. After hearing both sides, I think this bail application can be allowed. The petitioner is aged 75. Admittedly, there is some financial dispute between the petitioner and the defacto complainant. Crime No.502/20 is pending against the petitioner. The alleged incident in this case is happened on 05.04.2020. But the complaint was filed only on 18.04.2020. The learned counsel for the petitioner submitted that, as per Anx.A2 agreement, there is an agreement to pay the amount due to him by the victim on or before 18.04.2020 and without

paying the amount a false case is registered against the petitioner. The validity of Anx.A2 cannot be decided by this Court at this stage.

6. What ever that may be, taking the facts and circumstances of the case, I think that bail can be granted to the petitioner.

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, 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 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 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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