

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.2692 OF 2020

(CRIME NO.580/2019 OF ANJUTHENGU POLICE STATION,
THIRUVANATHAPURAM RURAL)

PETITIONER/ACCUSED

JOY ROBERT AGED 33 YEARS,
S/O ROBERT, KUNNUMPURAM VEEDU,
ANJUTHENGU P O, CHIRAYINKEEZHU,
THIRUVANATHAPURAM.

BY ADV. M R SASITH PANICKER

RESPONDENTS

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-PIN: 682031.

2. THE SUB INSPECTOR,
ANJUTHENGU POLICE STATION,
THIRUVANATHAPURAM, PIN: 691309

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.2692 of 2020

Dated this the 13th 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.580 of 2019 of Anjuthengu Police Station, Thiruvananthapuram. The above case is registered against the petitioner alleging offences punishable under Sections 294(b), 323, 324, 452, 354, 506(ii), 427 and 447 read with Section 34 IPC and Section 92(d) of Right of Person with Disabilities Act, 2016.

3.The prosecution case is that on 22.09.2019 at 9.30 p.m., the petitioner beaten the children of defacto complainant, while they were collecting water from public tab at Kochmethan Kadavu and thereafter, the petitioner,

due to previous enmity towards the defacto complainant, trespassed into the defacto complaint's house and attacked defacto complainant's aunty by beating on her chest and pushed her into floor. When the defacto complainant intervened, the petitioner beaten her face and shoulder. The petitioner also attacked the husband of the defacto complainant, who is physically disabled person. The petitioner also committed mischief.

4. The counsel for the petitioner submitted that, the only non-bailable offence alleged against the petitioner is the offences under Sections 452 and 354 IPC. The counsel for the petitioner also submitted that, no offence under Section 354 IPC is made out, even if the entire allegations are accepted.

5.The learned Public Prosecutor submitted that, if this Court is granting bail, stringent conditions may be imposed.

6. After hearing both sides, I think this Bail

Application can be allowed. The only non-bailable offence alleged against the petitioner is the offences under Sections 452 and 354 IPC. The offences registered against the petitioner includes 294(b), 323, 324 and 506(ii) IPC. The intention to commit these offences and the intention to commit the offence under Section 354 may be different. But, any way, it is a matter to be investigated by the Investigating Officer. I make the above observation only for the purpose of considering this bail application. The Investigating Officer is free to investigate the case, in accordance with law. In the light of facts and circumstances, 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

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