

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 15TH DAY OF MAY 2020 / 25TH VAISAKHA, 1942

BA NO.2763 OF 2020

(Crime No. 159/2020 of Oonnukal Police Station, Ernakulam)

Petitioner/ Accused:

Arun.V.A., aged 29 years, S/o Ambujakshan,
Vanditharayil House, Neendapara.P.O., Ernakulam-686693

By Advocate A.Rajasimhan
P.Ushakumari

v.

Respondents/ State and another:

1. State of Kerala
Represented by the Public Prosecutor,
High Court of Kerala, Ernakulam-682031
2. Station House Officer,
Oonnukal Police Station, Ernakulam-686693

By P.P. Sri.B.JAYASURYA (SR) & C.K.PRASAD

**THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 15.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

P.V.KUNHIKRISHNAN, J

B.A.No.2763 of 2020

Dated this the 15th 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.159 of 2020 of Oonnukal Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 294(b), 341 and 326 of IPC.

3. The prosecution case is that, due to enmity for having questioned the illicit liquor sale of his father, the petitioner restrained and attacked the defacto complainant at 7.30 p.m., on 14.03.2020 and caused fracture in his three rib bone and right leg finger.

4. The learned counsel for the petitioner submitted that, the entire allegation against the petitioner are

false. The injured sustained injuries because he had drunk and consequently, he fell down. He also submitted that the alleged incident happened on 14.03.2020 and the FI Statement was submitted on 18.03.2020. The learned counsel for the petitioner also submitted that, the defacto complainant is involved in several criminal cases.

5. The learned Public Prosecutor submitted that, serious injuries are sustained to the defacto complainant. In such circumstances, custodial interrogation of the petitioner is necessary.

6. After hearing both sides, and considering the facts and circumstances of this case, I think this bail application can be allowed on stringent conditions. Admittedly, the incident happened on 14.03.2020 and the FI Statement was recorded only on 18.03.2020. Of course, this aspect can be explained by the prosecution at the time of trial. But here is a case where the

petitioner has an entirely different version. Which version is correct is to be decided at the time of investigation and trial. I am not in a position to accept the case put forward by the learned counsel for the petitioner. Considering the facts and circumstances of this case, I think this bail application can be allowed on stringent conditions

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 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. The petitioner shall not enter the Oonnukal Police Station, till final report is submitted in Crime No.159/2020.

6. The petitioner shall not commit

similar offences.

7. If the petitioner is having passport, he should surrender the same before the Investigating Officer at the time of surrender, and if there is no passport, he will file an affidavit attested by a Notary before the Investigating Officer.

8. 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

VPK