

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.2767 OF 2020

(In Crime No. 647 / 2020 of Yerroor Police Station in Kollam District)

PETITIONERS / ACCUSED – A1 & 2

1. Thansal, aged 27 years,
S/o Thangalkunju,
Nellivila Puthen Veedu,
Karukon P.O., Anchal,
Kollam District.
2. Thangalkunju, aged 49 years,
S/o Mohammed Kunju,
Nellivila Puthen Veedu,
Karukon P.O., Anchal,
Kollam District.

By Adv. Sri. K.V.Anil Kumar &
Adv. Sri. Haseem Muhammad S

RESPONDENTS / STATE & COMPLAINANT

1. State of Kerala represented by the Public Prosecutor,
High Court of Kerala, Ernakulam.
2. Station House Officer, Yerroor Police Station
Kollam District.

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.2767 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. Petitioners are 1st and 2nd accused in Crime No. 647 of 2020 of Yerroor Police Station. The above case is registered against the petitioners alleging offences punishable under Sections 452, 323, 354, 294(b) read with 34 IPC.

3. The prosecution case is that, due to the reason that the defacto complainant telephoned the sister of the 1st petitioner, on 01.05.2020 at about 8.30 p.m., the petitioners trespassed into the house of the defacto complainant, and used abusive words and tried to capture her mobile phone and beat with hand and

kicked her abdomen and thereby committed the offences.

4. The learned counsel for the petitioners submitted that, the incident is not happened as alleged by the prosecution. The petitioners also filed a complainant before the police, but no case is registered. The learned counsel for the petitioners submitted that, no serious injuries sustained to the defacto complainant. The learned counsel for the petitioners also submitted that, the allegation includes Sections 323 and 354 of IPC, and that itself shows that there is no intention on the part of the petitioners to outrage the modesty of the defacto complainant.

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

6. After hearing both sides, and considering the

facts and circumstances of this case, I think this bail application can be allowed. No serious injuries is sustained to the injured. The intention to commit an offence under Section 323 IPC, and the intention to commit an offence under Section 354 are different, but of course it is a matter to be investigated by the Investigating Officer. I made this observation only for the purpose of considering this bail application. The petitioners and the defacto complainant are distant relatives. Considering the entire facts and circumstances of this case, 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 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 co-operate 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.

P.V.KUNHIKRISHNAN, JUDGE

VPK