

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.2788 OF 2020

(Crime No. 303/2020 of Manimala Police Station, Kottayam District)

Petitioner/Accused

Shajahan, Aged 56 Years,  
S/o V.A Abdul Azeez,  
Puthupparambil house,  
near Minimala Holy Magi church,  
Manimala village, Kottayam District

BY ADV SRI.Abdul Raof Pallipath, K.R. Avinash, Raj Carolin V.

Respondents/ Complainant

1. The State of Kerala, represented by  
Public Prosecutor,  
High Court of Kerala, Ernakulam-682031
2. The Station House Officer,  
Manimala Police Station, Kottayam

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**

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B.A.No. 2788 of 2020  
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Dated this the 15<sup>th</sup> day of May, 2020

**O R D E R**

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the accused in Crime No. 303 of 2020 of Manimala Police Station. The above case is registered against the petitioner alleging offences punishable under Section 307 of IPC. Petitioner was arrested on 26.03.2020 and he is in custody.

3. The prosecution case is that on 26.03.2020 at about 1.45 p.m., the accused in order to do away the life of his wife, attacked her with a weapon, by which the wife sustained serious injury.

4. The counsel for the petitioner submitted that, the petitioner is in custody from 26.03.2020. There is no

criminal antecedents against the petitioner. The incident happened in a spur of the moment. The petitioner is ready to abide any conditions, if this Court grant bail to him.

5. The learned Public Prosecutor submitted that, on stringent conditions, the bail can be granted to the petitioner, in the light of the fact that, the petitioner is in custody from 26.03.2020. The learned Public Prosecutor also submitted that, no criminal antecedents is reported against the petitioner.

6. After hearing both sides, and considering the facts and circumstances of this case, and considering the fact that the petitioner is in custody from 26.03.2020, and also based on the submission of the learned Public Prosecutor, 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 Superintendent of Jail concerned

where the petitioner is incarcerated is directed to release the petitioner on bail on executing a self bond ensuring that he will appear before the Court concerned as and when required, if he is not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioner as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone number and the address at which the petitioner would be residing after his release.

3. The Superintendent of Jail concerned, immediately after release of the petitioner will forthwith forward the bail bond obtained from the petitioner to the jurisdictional Court.

4. The petitioner immediately after release from the prison, report before the

Station House Officer of the Jurisdictional Police Station and shall furnish his phone number and the place where he is going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioner and shall ensure that the petitioner does not violate the terms of the undertaking.

5. 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.

6. The petitioner shall within one week from the commencement of the functioning of the jurisdictional court, if the court is not functioning at present, execute a bond for Rs.50,000/- (Rupees Fifty Thousand only) with

two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

7. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing and other directions in the wake of declared lock-down.

8. The petitioner shall not enter the jurisdiction limit of Manimala Police Station, till final report is filed in Crime No.303/2020 is submitted before the Court.

9. The petitioner shall appear before the Investigating Officer on all Mondays and Fridays, till final report is filed in the above case.

10. 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**

VPK