

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.2793 OF 2020

(In Crime No. 48/2020 before the Perumbadappu Police Station, Malappuram District)

Petitioner/Accused No.1 :

Hussain Kutty, Aged 28 years
S/o Subair
Koyilikkanakath House
Ponnani, Azheekkal
Ponnani Nagaram (po), Pin- 679583
Malappuram District.

By: Adv Jamsheed Hafiz

Respondent/Complainant

The State of Kerala,
Represented by Public Prosecutor,
High Court of Kerala, Ernakulam PIN- 682031

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:

O R D E R

This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. The petitioner is the sole accused in Crime No.48 of 2020 of the Perumbadappu Police Station registered alleging offences punishable under Sections 354, 354A, 354D and 384 of the Indian Penal Code.

3.The prosecution case is that about two years back, the petitioner used criminal force and outraged the modesty of the de facto complainant. It is also the case of the Prosecution that about one year back, promising to make the de facto complainant as a business partner, 30 sovereigns of de facto complainant was collected by the petitioner and when it was demanded, the petitioner sent a photo of the de facto complainant along with the petitioner to the husband of the de facto complainant and her relatives.

4. The learned counsel for the petitioner submitted that all the allegations are incorrect. He submitted that a private complaint is filed before the Magistrate Court and the same was forwarded to the Police under Section 156(3) of the Cr.P.C. Even if the entire allegations in the complaint are accepted, no offence is made out. He also submitted that, the petitioner is ready to abide any conditions, if this Court grants him bail.

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

6. After hearing both sides and in the light of the facts and circumstances of this case, I think, this Bail Application can be granted. Admittedly, the incident happened long back. Reading of the complaint, it is clear that there was a relationship between the petitioner and the de facto complainant. In such 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 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 to law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

pkk