

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.2797 OF 2020

(Crime No.116/2020 of the Palakkad Town South Police Station, Palakkad District)

Petitioner/Accused:

Mathews M. Mathew, S/o Late M.E. Mathew, aged 58 years, 30/708, Pazhayakalam, Thottingal, Palakkad District.

By Advs. Sri. Jacob Sebastian  
Sri. K.V.Winston  
Sri. Anu Jacob

Respondents/State & Complainant:-

1. State of Kerala, rep. by Public Prosecutor, High Court of Kerala, Ernakulam-682 031.
2. The Sub Inspector of Police, Town South Police Station Palakkad, Palakkad District-678 001.

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.2797 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 438 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the accused in Crime No.116 of 2020 of Palakkad Town South Police Station registered alleging offence punishable under Section 353 of the Indian Penal Code (IPC).

3.The prosecution case is that, the petitioner obstructed the duty of the process server of the Munsiff court, Palakkad.

4. The counsel for the petitioner submitted that, even if entire case is accepted, no offence under Section 353 of the IPC is made out. According to the prosecution, the allegation is that, the petitioner refused to give the acknowledgment of the summons addressed to his son to the process server.

5.The learned Public Prosecutor submitted that the

allegations against the petitioner is the same and if this Court granting bail to the petitioner, stringent condition may be imposed.

6. At this stage, I am not in a position to say whether an offence under Section 354 of the IPC is made out. It is a matter to be investigated by the Investigating Officer. I make this observation only for the purpose of considering the bail application. The Investigating Officer is free to investigate the matter and act accordingly. In the light of the facts and circumstances of the case and based on the allegations in the 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 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**