

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.2862 OF 2020

(AGAINST THE CRIME NO.1805/2019 OF ALUVA POLICE STATION,
ERNAKULAM DISTRICT)

PETITIONER/Accused:-

Ashik, C.S., aged 32 years, S/o.Saidu Muhammed
Cheriparambil House, Chalakkal Maramppilly PO
Ernakulam -683 107

By Adv. T.V Neema.

RESPONDENTS/ State & Defacto Complainant :-

1. State of Kerala
Represented by the Public Prosecutor,
High Court of Kerala, Kochi-31
2. Sub Inspector of Police,
Aluva East Police Station,
Aluva, Ernakulam District- 682 101

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. 2862 of 2020

Dated this the 15th 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 sole accused in Crime No.1805/2019 of Aluva East Police Station. The above case is registered against the petitioner alleging offences punishable under Section 376 IPC, Section 3(2)(5) of the SC/ST(PC) Act. The Petitioner was arrested on 04.05.2020 and he is in custody.

3. The prosecution case is that the petitioner and the defacto complainant were living together. On one day, the petitioner was missing and the defacto complainant filed a complaint and accordingly the above case is registered.

4. The counsel for the petitioner submitted that the petitioner and the defacto complainant were living together

for last several months. She submitted that the defacto complainant filed the complaint by mistake. According to the counsel for the petitioner, in all probabilities the matter will be settled and the defacto complainant is taking steps to file a petition under Section 482 Cr.P.C., to quash the entire proceedings.

5. The learned Public Prosecutor submitted that, in the light of the submission of the learned counsel for the petitioner and in the light of the facts and circumstances of this case, he is not opposing the bail application. The learned Public Prosecutor submitted that stringent conditions may be imposed.

6. After considering the submission of the petitioner and 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 petitione 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 do 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. 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.

Sd/-

**P.V.KUNHIKRISHNAN,
JUDGE**