

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT**

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 06TH DAY OF MAY 2020 / 16TH VAISAKHA, 1942

B.A.TMP NO.107 OF 2020

(Crime No.354/2020 of Ambalapuzha Police Station)

Petitioner/Accused:

Sajeer S, aged 25,
S/o.Abdul Shukkoor,
Palliparambil House,
Kakkazham P.O,
Ambalapuzha,
Alappuzha

By Adv. K.R VINOD

Respondents:

1. State of Kerala represented by
The Public Prosecutor,
High Court of Kerala,
Kochi -682 031
2. The Sub Inspector of Police
Ambalapuzha Police Station
Pin 688561

BY P.P.SRI.AJITH MURALI & SANTHOSH PETER(SR)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
06.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.TMP.No.107 of 2020

Dated this the 6th 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 1st accused in Crime No.354/2020 of Ambalapuzha Police Station. The above case is registered against the petitioner and others alleging offences punishable under Sections 341, 353 and 332 r/w 34 of Indian Penal Code.

3. The prosecution case is that on 21.3.2020 at 7.30 pm, when the Sub Inspector of Police has directed the petitioner and other accused persons to disburse from a public place near Kakkazham Railway Over Bride, on account of COVID 19 lockdown. It is alleged that the petitioner and others resisted the same and there was a scuffle in which the police officers sustained injury.

4. The learned counsel for the petitioner submitted that the alleged incident happened on 21.3.2020. On that day there was no lockdown. The Sub Inspector of Police unnecessarily attacked the

petitioner and others. In such circumstances there was a resistance and no injuries sustained to the police officers as alleged.

5. The prosecution case is that the petitioner and others violated the lockdown directions. But it is an admitted fact that on 21.3.2020 there was no lockdown in the State. Moreover there is no injury sustained in this case to attract Section 332 IPC.

6. The learned counsel for the petitioner also submitted that the 2nd accused is already arrested and the learned Magistrate granted bail to him. Considering the entire facts and circumstances I think that the 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**

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