

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.148 OF 2020

(CRIME NO: 1026 OF 2020 OF ANCHAL POLICE STATION, KOLLAM
DISTRICT)

Petitioners/Accused :

Ajith Kumar. N, S/o Nanappan, Aged 51,
Member, Ward No: 5, Anchal Gram Panchayath,
Residing at Sheeja Vilasam, Kuruvikonam,
Nedlyara.P.O,Anchal, Kollam

By Adv. Sri. B.Mohan Lal.

Respondents/complainants:

1. State of Kerala Represented by the Public Prosecutor, High Court of Kerala, Ernakulam-682 031.
2. The Station House Officer,AnchaI Police Station, Anchal.P.O, Kollam .
691306.

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.148 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 sole accused in Crime No.1026 of 2020 of Anchal Police Station registered alleging offences punishable under Sections 353, 354, 341, 294(b), 427 and 506 Indian Penal Code and Section 3 read with Section 4(1) of the Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012.

3.The prosecution case is that the petitioner wrongfully restrained and threatened the de facto complainant while discharging her duty on 17.04.2020, at 9.50 am, in Ayush Primary Health Centre, Kuruvikonam, Anchal. The de facto complainant is an office bearer of the Vanitha Committee of Ayush Medical Officers Association, State Committee, Kollam District Committee representing the ruling party CPI(M). It is

alleged that the petitioner shouted obscene words against her, outraged her modesty and deterred her from discharging her official duty, forcibly took her mobile while she tried to record the alleged incident. The petitioner throw her mobile and went outside. The petitioner caused damages to the mobile phone and thereby committed the offence.

4. The counsel for the petitioner submitted that, he is innocent in this case. He also contented that the petitioner and the de facto complainant are relatives. The de facto complainant is separated from her husband. The petitioner supported the husband of the de facto complainant. Hence there is enmity to her. He also submitted that the petitioner is a Ward Member of Anchal Grama Panchayat and he is representing Bharathiya Janatha Party (BJP). He also submitted that several complaints are received against the de facto complaint to him because he is the Ward Member of the Grama Panchayat. He also produced Annexure A3 complaint filed by a patient against the petitioner. He contented that, it is a false case registered against the petitioner due to political animosity.

5.The learned Public Prosecutor opposed the bail application saying that serious offences are registered against the petitioner and he also submitted that a medical officer is attacked by the petitioner.

6. I heard the learned counsel for the petitioner and the learned Public Prosecutor.

7. After hearing both sides, I think this is a case in which extraordinary jurisdiction under Section 438 of the Cr.P.C. is to be invoked. Admittedly the petitioner and the de facto complainant are relatives. There is a case to the petitioner that the de facto complainant is living separately from her husband. It is the case of the petitioner that the petitioner supported the husband of the de facto complainant. Because of that there is animosity to the de facto complainant towards the petitioner. Moreover, it is also to be considered that the petitioner is the sole Ward Member of a particular political party in Anchal Grama Panchayat which is ruled by the CPI(M). According to the petitioner, there is political vengeance for registering the

case. It is also to be noted that the de facto complainant after the alleged incident is not approaching the police. She is filing the complaint before the President of the Panchayat. The President of the Panchayat through the Secretary of the Panchayat forwarding the complaint to the police and the police registering the case. I think, in the facts and circumstances of this case, the petitioner is entitled to bail.

8. 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.

9. 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.

10. 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

YKB