

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.165 OF 2020

(Crime No.311/2020 of Muvattupuzha Police Station, Ernakulam District)

Petitioner/Accused No.4:

Anas, aged 26 years,  
S/o.Ashrafkutty,  
Puthuvila Puthenveedu,  
Sam Nagar P.O, Kulathurpuzha,  
Kollam District.

By Adv. Sri. Nireesh Mathew

Respondent/Complainant:

State of Kerala rep. by the Public Prosecutor,  
High Court of Kerala, Ernakulam

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:

**ORDER**

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

2. The petitioner is the 4<sup>th</sup> accused in Crime No.311 of 2020 of Muvattupuzha Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 143,147,148,341,294(b),506,324,326,308 r/w. Section 149 of the Indian Penal Code. Altogether there are six accused.

3.The prosecution case is that on 18.02.2020 at about 9.30 P.M., while the de facto complainant, who is a taxi driver, was waiting in front of Sabayon Hospital, it is alleged that accused Nos.1 to 6 reached in this spot in three motor cycles and accused No.1 attempted to hit the de facto complainant with an iron rod on his head. The allegation against accused Nos. 3 to 6 is that they instigated the accused Nos.1 and 2 for the above said acts and thereby they committed the aforesaid offences.

4. The counsel for the petitioner submitted that the main allegation is against accused Nos.1 and 2. He also submitted that the petitioner is innocent of the offences alleged against him and the petitioner is ready to abide any conditions imposed by this Court for granting bail.

5.The learned Public Prosecutor opposed the Bail Application. He submitted that the petitioner is involved in two other crimes registered by the Kulathoor Police Station in 2017 and 2019. It is also submitted that the petitioner is involved in yet another case at Muvattupuzha Police Station.

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

7. It is true that the petitioner is involved in three other cases. But it is to be noted that the allegation in this particular case is that he instigated 1<sup>st</sup> and 2<sup>nd</sup> accused to commit offence. There is no specific over act against this petitioner. More over, custodial interrogation of the petitioner does not appear to be necessary as far as this petitioner is concerned. The first accused was arrested and released on bail. Taking

into the entire facts and circumstances of the case, I think that this Bail Application can be granted.

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 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 not enter the jurisdictional limit of Muvattupuzha Police Station till final report in Crime No.311 of 2020 is filed except for the appearance before the

Court and before the Investigating Officer.

5. 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.

6. 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**