

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 05TH DAY OF MAY 2020 / 15TH VAISAKHA, 1942

BA TMP NO.174 OF 2020

(CRIME NO. 636 OF 2019 OF MUSEUM POLICE STATION,
THIRUVANANTHAPURAM)

PETITIONERS/1ST ACCUSED :

Vishnu S Babu aged 37 years, S/o Babu,
Vishnu Vehar, TC 12/832 Barton hill,
Kunnukuzhi, Thiruvananthapuram- 695037

By Adv. Sri. Sasthamangalam S. Ajithkumar

Respondents/Complainants

1. State of Kerala represented by the Public Prosecutor,
High Court of Kerala, Ernakulam-682031.
2. Sub Inspector of Police, Museum Police Station,
Thiruvananthapuram.

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

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 05.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.TMP.No. 174 of 2020

Dated this the 5th 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 1st accused in Crime No. of 636 of 2019 of Museum Police Station. The offence alleged against the petitioner include Section 302 of IPC. Petitioner was arrested on 28.03.2019, in connection with the above case and he is in custody.

3. The prosecution case is that accused nos. 1 and 2 wrongfully confined the deceased on 24.03.2019 at Barton hill, Kunnukuzhi and in the scuffle accused no.1 sat on the chest of the deceased and inflicted 74 injuries. The petitioner is the 1st accused, the 2nd accused is already released on bail.

4. The counsel for the petitioner submitted that the

petitioner is in custody from 28.03.2019 onwards. The 2nd accused in the case already released on bail. The main witnesses are already examined and they turned hostile to the prosecution. The petitioner submitted that he is ready to comply any condition imposed by this Court, if he is released on bail.

5. The learned Public Prosecutor opposed the bail application. He submitted that the petitioner filed about five bail applications earlier and all the bail applications were dismissed. The trial of the case is going on. The learned Public prosecutor submitted that the petitioner intimidated some of the witnesses from the jail. Therefore, release of the petitioner will affect the smooth conduct of the trial.

6. The defacto complainant appeared through a counsel and opposed the bail application. He submitted that, even though some of the witnesses turned hostile, there are admissible evidence in their deposition. A strong case is now set up by the prosecution. The petitioner is intimidating and

influencing the witnesses and hence, he may not be released on bail.

7. After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. The petitioner is the 1st accused in a murder case. The prosecution case is that, he inflicted 74 injuries on the deceased. Of course, it is a matter to be proved in the trial. The Public Prosecutor submitted that the petitioner influenced some of the witnesses, even from the jail. It is to be noted that some of the witnesses already turned hostile. The incident in this case happened in a broad daylight from a public place. The allegation is that, the petitioner sat on the chest of the deceased and inflicted 74 injuries, of course, which is to be proved in the trial. The nature of accusation and the severity of the punishment in the case of conviction is a factor to be noted while considering the bail application. The petitioner was in custody from 28.03.2019 onwards. In the larger interest of the society, it is not proper

to release the petitioner at this stage, especially, because the trial is already started.

8. Moreover, the jurisdiction to grant bail has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in **Chidambaram P v Central Bureau of Investigation (AIR 2019 SC 5272)** the following factors are to be taken into consideration while considering the application for bail.

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

It is true that there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be decided on the basis of the facts and circumstances of that case. In the light of the general principles laid down in the above judgment and considering the facts and circumstances of this case, I am of the opinion that this is not a fit case in which the petitioner can be released on bail. Hence this Bail Application is dismissed.

P.V.KUNHIKRISHNAN, JUDGE

VPK