

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

BA TMP NO.202 OF 2020

(Crime No-298/2020 of Vallikunnam Police Station ,Alappuzha District)

Petitioner/Accused No-1

1. Aniyam kunju, aged 40 years
S/o Bhaskaran ,Klasseril Tharayil
Kattanam Muri, Kattanam Village
Mavelikkara Taluk, Alappuzha (Dist)

By Adv Sri Vincent Joseph

Respondent/complainant

1. State of Kerala
Represented by Public Proscutor High
Court of Kerala , Ernakulam, Kochi-
682031
2. Sub Inspector of Police
Vallikunnam Police Station
Alappuzha (Dist)

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.202 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.298 of 2020 of Vallikunnam Police Station registered alleging offences punishable under Sections 294(b), 326, 308 read with Section 149 of the Indian Penal Code.

3.The prosecution case is that the petitioner and other accused attacked the de facto complainant and the de facto complainant sustained serious injuries including a fracture.

4. The counsel for the petitioner submitted that the incident is not happened as alleged by the prosecution. Actually the injured party attacked the petitioner and he sustained injury. Exhibit A1 is the medical records. He also submitted that the accused Nos.2 to 4 were already granted bail by the learned Magistrate when they surrender before the learned Magistrate.

5.The learned Public Prosecutor submitted that there are serious allegation against the petitioner. He opposed the bail application.

6.After considering the contentions of the petitioner and the learned Public Prosecutor, I think the bail application can be allowed. It is a case where there are two versions about the incident. The de facto complainant says that he was attacked by the accused and the accused says that he was attacked by the de facto complainant. Both sides sustained injuries. Who is the aggressor is a matter to be decided at the time of trial. At this stage we are not in a position to decide that question. But, I think the petitioner can be released on bail in the light of the facts and circumstances of the case and also taking into considering the fact that the other accused were granted bail by the learned Magistrate.

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 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