

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

B.A.NO.2296 OF 2020

(CRIME NO.1584/2019 OF KOLLAM EAST POLICE STATION PENDING AS SC  
NO.245/2020 OF 1ST ADDITIONAL SESSIONS JUDGE, KOLLAM)

PETITIONER/2ND ACCUSED:

Kuttan,  
S/o.Krishnan,  
Aged 36 years,  
Pushpa Bhavanam,  
Sanker Nagar,  
Pullikada, Vadakkumbhagom Cherry,  
Kollam East Village,  
Kollam District

By Adv.Sri.B.Mohanlal

Respondents/ Complainants

1. State of kerala,  
Rep.by the Public Prosecutor,  
High Court of Kerala,  
Ernakulam-682 031
2. The Station House Officer,  
Kollam East Police Station,  
Kollam District-691 001

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**

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B.A.No.2296 of 2020  
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Dated this the 5<sup>th</sup> 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 2<sup>nd</sup> accused in Crime No.1584 of 2019 of Kollam East Police Station registered alleging offences punishable under Sections 323, 302 and 201 read with Section 34 of IPC. Petitioner was arrested on 14.10.2019 and he is in custody.

3.The prosecution case is that the 1<sup>st</sup> accused is in animosity towards his deceased mother Savithri with respect to the dispute regard to the property. The 1<sup>st</sup> accused demanded her mother to transfer the property

in his name. It was refused by the mother. 1<sup>st</sup> accused on 3.9.2019 at about 5.00pm with intension to commit the murder of his mother, assaulted her, made her weak, strangulated her. Consequently, she died. Further case of the prosecution is that the 1<sup>st</sup> accused called the petitioner who is an auto rickshaw driver to help him to bury the body. The further allegation of the prosecution is that when the body was placed in the pit there was movement in the body, in order to ensure that the victim is dead, the petitioner and other accused again used force on the body which resulted fracture of ribs of the deceased.

4. The counsel for the petitioner submitted that the petitioner is in custody from 14.10.2019 onwards and the trial of the case is not started even now. Indefinite incarceration is not necessary in this case, especially, because the investigation of the case is over.

5.The learned Public Prosecutor submitted that the petitioner committed is grievous offence. He submitted that the petitioner may not be released on bail.

6.After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. The petitioner filed the bail application before this court earlier and same was dismissed on 3.2.2020 as per Anneuxre A5 order. This court considered the bail application after submitting the final report. Even after submission of the final report, this court refused to grant bail. All the contentions of the petitioner are considered in detail in Annexure A5 order. In such circumstances, there is no change of circumstances to exercise jurisdiction under Section 439 of Criminal Procedure Code again.

7. 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**

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