

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 5TH DAY OF MAY, 2020 / 15TH VAISAKHA, 1942

B.A. TMP No. 263 / 2020

(SC No.595 of 2019 on the file of the Court of Additional Sessions Court-
I,Thodupuzha)

(Crime No. 442 of 2019 of Thodupuzha Police Station)

PETITIONER/ACCUSED No: 1:

Arun Anand, aged 37years
S/o. Anandkumar, Aiswarya,
Near Kumaramangalam Village Office
Kudavettoor P.O.From, Flat No.A3,
Nanthencode,Kawdiyar Kara,
Kawdiyar Village,
Thiruvananthapuram

By Advocate. M.Sunilkumar

Vs.

RESPONDENT/COMPLAINANT:

State of Kerala represented by
The Public Prosecutor, High Court of Kerala,
Ernakulam, Kochi-682031

SRI. AJITH MURALI, PP
SRI.SANTHOSH PETER, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
05.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.TMP No.263 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 SC No.595 of 2019 on the files of Additional Sessions Court-I, Thodupuzha. The above case is charge sheet against the petitioner and another alleging offences punishable under Sections 294(b), 323, 326, 506(i), 302, 201, 212 of the Indian Penal Code and Section 75 of the Juvenile Justice (Care and Protection of Children) Act.

3.The prosecution case is that 1st accused is a relative of one Biju who was the husband of the 2nd accused died due to heart attack. Thereafter, the 2nd accused fell in love with the 1st accused which resulted in the former leaving her house along with her two children and joining with latter. Subsequently, on 27.03.2019, midnight at about 1.30 am, while the children

were asleep, accused Nos.1 and 2 locked the house and went out . It is alleged that when they returned by about 3 am and woke up the children, the younger child was seen to have urinated in his trousers. It is alleged that the 1st accused asked about the same to the elder child Aryan and abused him, brutally manhandled him by kicking and beating. The injured boy was taken to Chazhikad Hospital, Thodupuzha. As the injuries were serious, the child was referred to Medical College, while undergoing treatment, the child succumbed to the injuries. It is also alleged that the 1st accused deliberately delayed the treatment at Chazhikad Hospital. The second accused is alleged to have given a false explanation as to the cause of the injury at hospital. This is the facts of the case.

4. The counsel for the petitioner submitted that the petitioner is sick and he may be released on bail on medical ground.

5.The learned Public Prosecutor seriously opposed the bail application and submitted that the offence alleged against the petitioner are heinous in nature. The petitioner is not entitled

to bail, it is submitted by the prosecution.

6. After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. The allegations against the petitioner are very serious. The only ground raised by the petitioner is that is on medical ground. That is not a ground to release the petitioner on bail. There will be sufficient arrangements in the jail to treat the petitioner, if he is sick. The accused cannot be released on bail simply because he is sick and he want better treatment. If an accused who is in jail and he is sick and he want treatment, there are procedures in the jail rules. That is not a ground to grant bail to the petitioner. Moreover, the nature of accusation and severity of the punishment in case of conviction of the accused is to be considered while considering the bail application by this Court. If the petitioner is released on bail, this will give a wrong signal to the society.

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

YKB