

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. 288 / 2020

(Crime No.365 /2018 of Chathannoor Police Station, Kollam)

Petitioner/1stAccused

Thoufeek, Aged 29 years
S/O Shajahan,
Thoufeeq Manzil,Pallimon,
KizhakkekkaraCherry, Now residing at
Malevayal, Thykkavu PadinjattathilVeedu,
Velichikkala, Nedumpana Village,
Kollam District

By Adv. M R Sasith Panicker

RESPONDENTS:

1. State of Kerala,
Represented by the Public Prosecutor,
High Court of Kerala, Ernakulam. Pin 682031
2. The Sub Inspector of Police,
Chathannoor Police Station,
Kollam. - 691572

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.288 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.365 of 2018 of Chathannoor Police Station registered alleging offences punishable under Sections 380, 457 read with Section 34 of the Indian Penal Code. Petitioner is in custody from 15.04.2020.

3.The prosecution case is that the 1st accused along with the 3rd accused had stolen Television set from the OP Department of the Nedumpana Community Health Centre, wherein the de facto complainant is working as Medical Officer. The allegation is that the accused effected entry into the waiting hall by destroying the grill fixed at the eastern side of the Community Health Centre.

4. The counsel for the petitioner submitted that the petitioner is in custody for the last several days and he may be released on bail on any conditions.

5.The learned Public Prosecutor submitted that the case was originally registered in 2018. The petitioner filed anticipatory bail and the same was dismissed. After dismissal of the bail, the petitioner was absconding and he was arrested only on 15.01.2020. The prosecution submitted that the petitioner is involved in theft case and he 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. After dismissal of the anticipatory bail application, the petitioner was absconding. The case was registered in 2018. Now, the petitioner was arrested only on 15.04.2020. The crime is registered in 2018. Considering the entire facts and circumstances of the case, I think the petitioner is not entitled bail.

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