

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

B.A.TMP NO.73 OF 2020

(Crime No.241 /2020 of Thamarassery Police Station)

**Petitioner/Accused:**

Vijayan A aged 48 years  
S/o Appu  
Lakshmi Nivas  
Ayiramkolli, Ambalavayal P.O.  
Wayanad.

By Adv. K.R VINOD

**Respondents:**

1. State of Kerala represented by  
The Public Prosecutor,  
High court of Kerala,  
Kochi -682 031
2. The Sub Inspector of Police  
Thamarasseri Police Station  
Pin 673573

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**

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B.A.TMP. No.73 of 2020  
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Dated this the 6<sup>th</sup> 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 accused in Crime No.241 of 2020 of Thamarassery Police Station registered alleging offences punishable under Sections 354, 354 A(1)(i) of IPC read with Section 119(1)(A) (2) of the Kerala Police Act.

3. The prosecution case is that on 27.02.2020 at about 6.30 am, while the defacto complainant was traveling in a KSRTC bus from Kozhikode to Mananthavadi, the petitioner who was seated behind her

had outraged the modesty of the defacto complainant by poking at her right breast and thus the petitioner committed the offence.

4. The counsel for the petitioner submitted that the only non bailable offence alleged is under Section 354 of IPC. According to him, no offence under Section 354 of IPC is made out in this case, because even according to the version of the prosecution there is no assault or criminal force. He submitted that Section 354A (1)(i) of IPC is bailable. He also submitted that the offence under Section 119(1)(A)(2) of Kerala Police Act is also bailable.

5. The learned Public Prosecutor concedes that only non bailable offence is under Section 354 of IPC. But he opposed the bail application because, the act of the petitioner is not justified especially because he is a Government servant.

6. After hearing both sides, I am also of the view

that the allegation against the petitioner who is a Government servant cannot be accepted. But this is a matter to be proved in a court of law after conducting trial. I am not making any observations on merit of the case. If the case is considered on merit, the only non bailable offence alleged against the petitioner is under Section 354 of IPC. Even if, the prosecution case is accepted in toto, at this stage I am not in a position to observe that there was assault of criminal force. Of course, this is also I am under to be decided during trial. It is also submitted by the petitioner that he is a Government servant working as an Accountant at Muppainad Grama Panchayath. Considering the entire facts and circumstances of this case, I think this bail application can be allowed.

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 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 to law, even though the bail is granted by this Court.

**P.V.KUNHIKRISHNAN,**

**JUDGE**