

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.79 OF 2020

(Crime No. 243/2020 of Kalamassery Police Station, Ernakulam District)

Petitioners/Accused No.1 and 2

1. Abdul Rahim, S/o Sulaiman, Aged 46 years, Thoppil House, Pallilam Kara, HMT Colony Post, Kalamassery, Ernakulam District.
2. Abdul Salam, S/o Sulaiman, Aged 53 years, Thoppil House, Pallilam Kara, HMT Colony Post, Kalamassery, Ernakulam District.

By Adv. Mohamed Sabah & Saipooja

Respondents

1 State of Kerala, Represented by Public Prosecutor High court of Kerala Ernakulam District, Pin-682031.

2.Station House Officer Kalamassery Police Station Ernakulam District, Pin-682034.

BY P.P.SRIAJITH 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.79 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. petitioners are the accused in Crime No.243 of 2020 of kalamassery Police Station registered alleging offences punishable under Sections 341, 323, 448, 294(b) and 326 read with Section 34 of the Indian Penal Code.

3.The prosecution case is that on 01.04.2020, at about 11.30 am, the petitioners uttered obscene words against the de facto complainant, his wife and son in front of the house of the de facto complainant and they were beaten and kicked by the petitioners.

4. The counsel for the petitioners submitted that the petitioners and the victim are neighbours. According to him the incident is not happened as alleged by the prosecution.

5.The learned Public Prosecutor submitted that grievous hurt is sustained to the injured and the victim is a neighbour and if bail is granted, there is chance for clash between the petitioners and the de facto complainant again.

6. Considering the facts and circumstances of the case, I think this bail application can be allowed on stringent condition. The petitioners and the injured are neighbours. According to the petitioners the incident happened in a particular manner. According to the prosecution the incident happened in another manner. I am not in a position to decide the same at this stage. This is a matter to be decided during trial. But, taking note of the fact that, there is rivalry between the petitioners and family of the injured, till investigation of this case is over, the petitioners shall not enter the jurisdiction limit of the police station. With such condition, 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 petitioners 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 petitioners, they 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 Petitioners shall appear before the Investigating Officer as and when required. The petitioners shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

4. The petitioners 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 petitioners, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

6. The petitioners shall not enter the jurisdiction limit of Kalamassery police station till final report is filed in Crime No.243 of 2020.

P.V.KUNHIKRISHNAN, JUDGE

YKB