
(2021) 05 KL CK 0043
In the High Court Of Kerala
Case No : Bail Application No. 3388 Of 2021

Biju And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 04-05-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 34, 294(b), 308, 323, 324, 506

Citation : (2021) 05 KL CK 0043

Hon'ble Judges : P.V. Kunhikrishnan, J

Bench : Single Bench

Advocate : M.A. Ahammad Saheer, Sreeja V

Final Decision : Allowed

Judgement

1. This Bail Application is filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioners are the accused in Crime No.379 of 2021 of Kunnamkulam Police Station. The above case is registered against the petitioners alleging

offences punishable under Sections 323, 324, 294(b), 506 and 308 r/w Section 34 IPC.

3. The prosecution case is that on 28.3.2021 at 10.30 p.m., the accused in furtherance of their common intention, sprayed pepper on the face of the

defacto complainant, abused and criminally intimidated and slashed him with sword on his head causing injury to the defacto complainant on his left hand.

4. Heard the counsel for the petitioners and the Public Prosecutor. The counsel for the petitioners submitted that the petitioners are in custody from

29.3.2021 onwards. The counsel submitted that there is no serious injury

sustained to the injured in this case. According to the counsel, the incident is not happened as alleged by the prosecution. The counsel submitted that the petitioners are ready to abide any conditions if this Court grant them bail.

The Public Prosecutor opposed the bail application. The Public Prosecutor submitted that the petitioners committed serious offence.

5. Admittedly, the petitioners are in custody from 29.3.2021 onwards. It is true that the allegations against the petitioners are very serious. But

considering the fact that the petitioners are in custody from 29.3.2021 onwards, I think this bail application can be allowed on stringent conditions.

6. Moreover, the 2nd wave of COVID-19 is spreading in the country and the citizens are facing serious difficulties. In the state of Kerala, the 2nd

wave of the pandemic is creating lot of problems and even the day-to-day life of the citizens are affected. Everyday, about 25,000 people are tested

positive with COVID-19. In such circumstances, this Court has to consider this fact also while considering bail applications. The life is more important

than anything. Therefore, I am considering this bail application based on the above pandemic situation.

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. These happened during the

1st wave of COVID-19 season.

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. Petitioners shall be released on bail on executing a bond for Rs.50,000/-

(Rupees Fifty Thousand only) each with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

2. The petitioners shall appear before the Investigating Officer for interrogation as and when required. The petitioners shall co-operate with the investigation and shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

3. Petitioners shall not leave India without permission of the jurisdictional Court.

4. Petitioners shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.

5. 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 Covid 19 pandemic.

6. 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.