

(2020) 11 KL CK 0235
In the High Court Of Kerala
Case No : Bail Application No. 6951 Of 2020

Dileep And Anr

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 02-11-2020

Acts Referred:

Indian Penal Code, 1860 — Section 143, 147, 149, 269, 270, 294(b), 353
Kerala Police Act, 2011 — Section 119A
Kerala Epidemic Diseases Ordinance, 2020 — Section 4(2)(d), 5
Health Service Institution (Prevention Of Violence And Damage To Property) Act, 2012 — Section 4
Code Of Criminal Procedure, 1973 — Section 437, 438

Citation : (2020) 11 KL CK 0235

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

Bench : Single Bench

Advocate : Binu George, Renjith. T.R.

Final Decision : Disposed Of

Judgement

1. This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. Petitioners are the accused No.1 and 3 in Crime No.1500 of 2020 of Chathannoor Police Station. The above case is registered against the

petitioners alleging offences punishable under Sections 143, 147, 294(b), 353, 269, 270 r/w Section 149 of the IPC. The offence under Section 119A of

Kerala Police Act, Section 4(2)(d) and Section 5 of Kerala Epidemic Diseases Ordinance, 2020 and Section 4 of the Health Service Institution

(Prevention of Violence and Damage to Property) Act 2012 is also alleged against the petitioners.

3. The prosecution case is that the petitioners along with second accused were in quarantine at Coronoa First Line Treatment Centre in Ladies Hostel

of Azeeziya Nursing College. It is alleged on 23.7.2020 at 7 p.m., liquor, beedi, cigarettes along with food articles were forwarded to the first

petitioner. It is further alleged that the above illicit articles were removed by the employees of the institution. The first accused scold them using filthy

language. It is also alleged that the petitioner and other accused created a panic situation there and even attacked health workers.

4. Heard the counsel for the petitioners and the learned Public Prosecutor.

5. The counsel for the petitioners submitted that the allegations against the petitioners are not correct. The counsel submitted that the second accused

is already arrested and released on bail. The counsel submitted that even if the entire allegations are accepted, the offence alleged are not attracted.

The only non-bailable offence is under Section 353 IPC. According to the counsel, the ingredients of Section 353 IPC is not made out in this case.

6. The learned Public Prosecutor seriously opposed the bail application. The Public Prosecutor submitted that this Court should take these types of

cases seriously and this Court may not entertain an application under Section 438 Cr.P.C.

7. The Public Prosecutor submitted that the health workers in the State are doing their level best to contain the pandemic. In such situation, the public

should co-operate. The allegation against the petitioners are very serious.

8. After hearing both sides, I think this is not a fit case, in which orders under Section 438 of the Cr.P.C can be issued. At this stage, the counsel for

the petitioners submitted that the petitioner is ready to surrender before the investigating officer and co-operate with the investigation. Consideration of

bail application under Section 438 and consideration of bail application under Section 437 Cr.P.C are different. Considering the entire facts and

circumstances, I think this bail application can be disposed of with the following directions:

(i) The petitioners shall appear before the investigating officer within 10 days from today. The investigating officer can interrogate the petitioners.

Thereafter, if the petitioners are arrested, the petitioners will be produced before the jurisdictional magistrate forthwith.

(ii) When the petitioners are produced before the jurisdictional magistrate, if a bail application is filed by the petitioner after giving prior notice to the

Prosecutor concerned, the learned Magistrate will consider the same on the date

of filing the bail application itself.