

(2020) 12 KL CK 0232
In the High Court Of Kerala
Case No : Bail Application No. 8219 Of 2020

Gopan And Ors

APPELLANT

Vs

State Of Kerala And Anr

RESPONDENT

Date of Decision : 15-12-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 34, 294(b), 323, 341, 354, 427, 451

Citation : (2020) 12 KL CK 0232

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

Bench : Single Bench

Advocate : R. Kishore, Ajith Murali

Final Decision : Allowed

Judgement

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

2. Petitioners are the accused in Crime No.2144 of 2020 of Kottiyam Police Station, Kollam. The above case is registered against the petitioners

alleging offences punishable under Sections 451, 341, 294(b), 323, 354, 427 r/w. Section 34 IPC.

3. The prosecution case is that the petitioners due to previous enmity wrongfully restrained the de facto complainant and assaulted her. It is also

alleged that the petitioners used filthy language. According to the prosecution, the petitioners committed mischief also.

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

5. The counsel for the petitioners submitted that the de facto complainant and others are using the property of the petitioners for illicit liquor business.

There was some dispute about the same. Because of the same, a false case is

registered. The counsel submitted that even if the entire allegations are accepted, the offence under Section 354 IPC is not made out. The other offences alleged are all bailable offences.

6. The Public Prosecutor opposed the bail application. But the Public Prosecutor submitted that if this Court is granting bail, stringent conditions may be imposed.

7. After hearing both sides, I think this bail application can be allowed on stringent conditions. Admittedly, the only non bailable offence alleged against the petitioners is under Sections 354 IPC. Whether the offence under Section 354 IPC is made out or not is a matter to be investigated by the Investigating Officer. I do not want to make any observation about the merit of the case.

8. Considering the entire facts and circumstances of the case, I think this bail application can be allowed on stringent conditions.

9. 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.

10. 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.

11. 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 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 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.

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

5. 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.

6. 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.

7. If any of the above conditions are violated by the petitioners, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is

granted by this Court.