

**(2020) 11 KL CK 0047**  
**In the High Court Of Kerala**  
**Case No : Bail Application No. 6381 Of 2020**

Jibin Jose And Anr

APPELLANT

Vs

State Of Kerala

RESPONDENT

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**Date of Decision :** 20-11-2020

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 438  
Indian Penal Code, 1860 — Section 34, 323, 324, 326

**Citation :** (2020) 11 KL CK 0047

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

**Bench :** Single Bench

**Advocate :** Mathew Devassi, C.N. Prabhakaran

**Final Decision :** Allowed

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## Judgement

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

2. The Petitioners are the accused in crime No.403/2020 of Devikulam Police Station, Idukki District. The above case is registered against the

petitioners originally under Section 323 and 324 read with Section 34 of the Indian Penal Code. Subsequently, the offence under Section 326 is also added.

3. The prosecution case is that, the petitioners and the defacto complainant are residing on either side of a road. The defacto complainant is

conducting catering business. It is alleged that, on the date of the incident, the defacto complainant and his friends were consuming beer and after

9.00.p.m., there was some wordy quarrel between the parties. It is stated that, the petitioners assaulted the defacto complainant and he sustained

grievous hurt.

4. Heard the learned counsel for the petitioners and the learned Public Prosecutor.
5. The learned counsel for the petitioners submitted that, this is a case and counter case. The counter case is registered as crime No.406/2020 of the same Police Station. The learned counsel for the petitioners submitted that, the incident is not happened as alleged by the prosecution. The learned counsel for the petitioners submitted that, there is no grievous hurt sustained to the injured in this case and therefore, the offence under Section 326 I.P.C. is not prima facie made out. The other offences are all bailable offences. The learned counsel for the petitioners submitted that, the petitioners are ready to abide any conditions, if this Court grant them bail.
6. The learned Public Prosecutor seriously opposed the bail application. The learned Public Prosecutor submitted that, the injured in this case sustained a stab injury. The learned Public Prosecutor submitted that, the recovery is not effected even now. The custodial interrogation of the petitioners are necessary. The learned Public Prosecutor submitted that, since the injured sustained stab injury, this Court may not invoke the powers under Section 438 Cr.P.C. in these type of cases. The learned Public Prosecutor conceded that, there is no fracture as per the wound certificate made available to him, by the Investigating Officer.
7. After hearing both sides, I think this bail application can be allowed on stringent conditions. Admittedly, there is no fracture to the injured. Whether an offence under Section 326 IPC is made out or not is a matter to be investigated by the Investigating Officer. I don't want to make any observation about the merit of the case. But the other offences alleged against the petitioners are all bailable offences. This is a case and counter case. There are allegations and counter allegations about the same incident. That also, I cannot decide which version is true, while considering a bail application under Section 438 Cr.P.C.
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.