
(2020) 11 KL CK 0038
In the High Court Of Kerala
Case No : Bail Application No. 7553 Of 2020

Jothish And Anr

APPELLANT

Vs

State Of Kerala And Anr

RESPONDENT

Date of Decision : 20-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 34, 323, 324, 341, 354, 452, 506(ii)

Citation : (2020) 11 KL CK 0038

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

Bench : Single Bench

Advocate : K. Anand, Renjith. T.R.

Final Decision : Allowed

Judgement

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

2. Petitioners are accused in Crime No.762/2020 of Chittur Police Station. The above case is registered against the petitioners alleging offences

punishable under Sections 452, 341, 323, 324, 354 and 506 (ii) r/w Section 34 of IPC.

3. The prosecution case is that on 30.9.2020 at 6 p.m., the petitioners in furtherance of their common intention, trespassed into the sit out of the house of the defacto complainant and beat her and her husband with stick and also kicked her down.

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

5. The counsel for the petitioners submitted that even if the entire allegations are accepted no offence under Section 354 IPC is made out. The

counsel submitted that no such incident as alleged is happened. The allegation

that the petitioners trespassed into the house of the defacto complainant

is false. The counsel submitted that the petitioners are ready to abide any conditions if this Court grant them bail.

6. The Public Prosecutor opposed the bail application. But the Public Prosecutor made available the wound certificate in which it is clear that there is

no external injury to the victim and there is only allegation of body pain.

7. After hearing both sides, I think this bail application can be allowed on stringent conditions. Whether the offence under Section 354 IPC is made out

or not is a matter to be investigated by the investigating officer. I don't want to make any observations on the merit of the case. As I said earlier,

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

8. 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.

9. 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.

10. 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) each 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 them from disclosing such facts to the Court or to any police officer.

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