

(2020) 11 KL CK 0120
In the High Court Of Kerala
Case No : Bail Application No. 7700 Of 2020

Nakulan Nadar And Anr

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 25-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 143, 147, 148, 149, 308, 323, 324, 447, 506

Citation : (2020) 11 KL CK 0120

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

Bench : Single Bench

Advocate : K.K. Dheerendrakrishnan, N.P. Asha, 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. The petitioners are the accused in crime No. 665 of 2020 of Pangode Police Station, Thiruvananthapuram District. The above case is registered against the petitioners alleging offences punishable under Sections 143, 147, 148, 323, 324, 447, 308 and 506 read with 149 Indian Penal Code (IPC).
3. The prosecution case is that, the petitioners along with three other accused formed themselves into an unlawful assembly with a common object to trespass into the courtyard of the de facto complainant. It is alleged that the 1st accused intimidated the de facto complainant by showing a sword and he attacked de facto complainant with a wooden stick. It is alleged that the other accused also assaulted the victim in this case.
4. Heard the learned counsel for the petitioners and the learned Public Prosecutor.
5. The learned counsel for the petitioners submitted that, there are a lot of civil

disputes pending between the petitioners and the de facto complainant.

Both parties approached the munisiff court and the matter reached up to this Court. This is a false case foisted against the petitioners. According to

the counsel, the incident is not happened as alleged by the prosecution. The learned counsel for the petitioners submitted that, this is a counter case

and there is another case also registered in connection with the same incident. The learned counsel for the petitioners also submitted that, the

petitioners are ready to abide any conditions, if this Court grant them bail.

6. The learned Public Prosecutor opposed the bail application. The learned 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. It is a case and counter case. There are allegations and counter allegations about the same incident. Which version is correct can not be decided by this Court, while considering an application under Section

438 Cr.P.C. Admittedly, there are civil disputes pending between the parties for the last several years. As I stated earlier, this is a case and counter

case. I perused the wound certificate also. There is no serious injury sustained to the injured. Considering the entire facts and circumstance 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 proposes 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 him from disclosing such facts to the Court or to any police officer;
4. The petitioners shall not leave India without permission of the Court;
5. The petitioners shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is 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.

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.