

(2020) 11 KL CK 0050
In the High Court Of Kerala
Case No : Bail Application No. 5572 Of 2020

Radhakrishnan Nair And Ors

APPELLANT

Vs

State Of Kerala And Anr

RESPONDENT

Date of Decision : 20-11-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 324, 326

Citation : (2020) 11 KL CK 0050

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

Bench : Single Bench

Advocate : Sunny Mathew, Santosh Peter

Final Decision : Allowed

Judgement

1. Petitioners are the accused in Crime No.940/2020 of Pantheerankavu Police Station. Above case is registered against the petitioners alleging offences punishable under Sections 324 and 326 read with Section 34 of the IPC.
2. The prosecution case is that, on 30.07.2020 at 6.30 p.m., the defacto complainant reached Vallikkoth road, which is near to his house. At that time he saw the accused person standing on the road. Thereupon, the defacto complainant questioned them about the reason for parking a car having registration No.KL-11 BF 9881 in the land belonging to the defacto complainant. At that time, the accused in furtherance of their common intention, attack the defacto complainant and he sustained grievous hurt. This is the sum and substance of the allegation against the petitioners.
3. Heard the learned counsel for the petitioners and the learned Public Prosecutor.
4. The learned counsel for the petitioners submitted that, this is a case and counter case. The counter case is registered as Crime No.941/2020. The

counsel submitted that there is a long delay of 21 days in lodging the F.I. Statement in this case. The counsel submitted that, the incident is not

happened as alleged by the prosecution. The counsel submitted that, the petitioners are ready to abide any conditions in this Court to grant them bail.

5. Learned Public Prosecutor opposed the bail application. The Public Prosecutor submitted that, the injured in this case sustained a grievous hurt.

6. After hearing both sides, I think this bail application can be allowed on stringent conditions. This Court passed an interim bail to the petitioners on

13.11.2020, which is extracted hereunder:-

â??Applicants are accused in Crime No.940/2020 of Pantheerankavu Police Station, Kozhikode for having allegedly committed offences

punishable under Sections 324 and 326 r/w Section 34 of IPC.

2. The prosecution case, in brief, is that the de facto complainant was assaulted by the applicants in furtherance of common intention and a

grievous injury was caused with a dangerous weapon.

3. However, the wound certificate is not available and the investigating officer has not co-operated with the learned Public Prosecutor in

giving a report regarding the details of the wound certificate. Hence, it is not possible to proceed with the hearing of the matter.

4. The learned counsel appearing for the applicants submits that the investigating officer, in this case, is breathing down their neck,

threatening to arrest them. Therefore, the applicants are granted interim anticipatory bail. In the event of they being arrested, they shall be

released on bail on the execution of bond for Rs.50,000/- (Rupees fifty thousand only) each with two solvent sureties each for the like

amount to the satisfaction of the investigating officer.â??

7. Admittedly it is a case and counter case. There are allegation and counter allegation about same incident. Which version is correct cannot be

decided by this Court, while considering the bail application. Admittedly, there is a long delay of 21 days in lodging the F.I. Statement also. I do not

want make any observation about the merit of the case. Considering the entire 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.