

(2021) 05 KL CK 0022

In the High Court Of Kerala

Case No : Bail Application No. 3058 Of 2021

Sakeer Hussain T.P And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 04-05-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 34, 294(b), 323, 326, 341, 506(i)

Citation : (2021) 05 KL CK 0022

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

Bench : Single Bench

Advocate : Babu S. Nair, Sreeja V

Final Decision : Allowed

Judgement

1. This Bail Application filed under Section 438 of Criminal Procedure Code (Cr.P.C.) was heard through Video Conference.

2. Petitioners are the accused in Crime No.169 of 2021 of Mannarkkad Police Station. The above case is registered against the petitioners alleging

offences punishable under Sections 341, 323, 294(b), 506(i) and 326 read with Section 34 of the Indian Penal Code.

3. The prosecution case is that the de facto complainant gave a statement to the Police on 02.04.2021 alleging that both the petitioners obstructed the

motorcycle of the de facto complainant at about 8.00 a.m. on 23.03.2021 and the first accused assaulted him using a wooden stick. Hence, it is alleged

that the petitioners have committed the offence.

4. Heard the learned counsel for the petitioners and the learned Public Prosecutor. The learned counsel for the petitioners submitted that the alleged

incident happened on 23.03.2021 and the complaint was lodged only on

02.04.2021. The learned counsel also submitted that the allegations against the petitioners are not correct. The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor submitted that the petitioners committed the offence under Section 326 IPC.

5. The only non-bailable offence alleged against the petitioners is the offence under Section 326 IPC. There is a delay in lodging the FIR. I do not want to make any observation about the merits of the case. It is a matter to be investigated by the Investigating Officer. Considering the facts and circumstances of the case, I think this bail application can be allowed on stringent conditions.

6. Moreover, the 2nd wave of COVID-19 is spreading in the country and the citizens are facing serious difficulties. In the state of Kerala, the 2nd wave of the pandemic is creating a lot of problems and even the day-to-day life of the citizens is affected. Everyday, about 25,000 people are tested positive with COVID-19. In such circumstances, this Court has to consider this fact also while considering bail applications. The life is more important than anything. Therefore, I am considering this bail application based on the above pandemic situation.

7. 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. These happened during the

1st wave of COVID-19 season.

8. 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.

9. 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. 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 on 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. 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. 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.