
(2020) 11 KL CK 0030
In the High Court Of Kerala
Case No : Bail Application No. 7629 Of 2020

Sameer	Vs	APPELLANT
State Of Kerala		RESPONDENT

Date of Decision : 20-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 307, 327, 332, 353
Kerala Protection Of River Banks And Regulation Of Removal Of Sand Act, 2001 —
Section 23

Citation : (2020) 11 KL CK 0030

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

Bench : Single Bench

Advocate : R.Ranjith, C.N Prabhakaran

Final Decision : Allowed

Judgement

1. This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the accused in Crime No.375 of 2020 of Nilambur Police Station. The above case is registered against the petitioner alleging offences

punishable under Sections 307, 332, 353 and 327 read with Section 34 of I.P.C. The offence under Section 20 read with Section 23 of Kerala

Protection of River Banks (Regulation and Removal of Sand) Act is also alleged. The petitioner was arrested on 15.10.2020.

3. The prosecution case is that on 22.07.2020, the defacto complainant and party were on patrol duty at Mampad Tana â?" Thomskadavu road. It is

alleged that the accused six in number were seen transporting river sand in a lorry bearing Registration No.KL-10-W-9599. It is the prosecution case

that the defacto complainant and party intercepted the vehicle and due to the

said enmity the accused in furtherance of their common intention and object of committing murder of the police officials, attacked the police party with deadly weapons including iron rods and voluntarily caused hurt to them. Hence it is alleged that the accused committed the offence.

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

5. The learned counsel for the petitioner submitted that the petitioner is in custody from 15.10.2020 onwards. The counsel submitted that even if the

entire allegations are accepted the offence under Section 307 of I.P.C is not made out. The counsel submitted that the above offence is included in

this case only to see that the petitioner is behind the bar. The counsel submitted that no injuries sustained to the defacto complainant or other police

officials. The counsel submitted that the petitioner is ready to abide any conditions if this court grant him bail.

6. The learned Public Prosecutor seriously opposed the bail application. The learned Public Prosecutor submitted that the petitioner and the others

obstructed the official duty of the police officers. The learned Public Prosecutor also submitted that the petitioner and the other accused were doing

illegal sand mining and transportation. Therefore, the learned Public Prosecutor submitted that this Court may not release the petitioner on bail at this

stage.

7. After hearing both sides, I think this bail application can be allowed on stringent conditions. The petitioner is in custody from 15.10.2020. I verified

with the Public Prosecutor whether there is any serious injury sustained to the victims in this case. The Public Prosecutor conceded that there is no

serious injuries sustained to the injured in this case. It is true that the allegation against the petitioner are very serious. There can be a direction that if

the petitioner is involved in similar offences the Investigating Officer can file a petition to cancel this bail order before the jurisdictional court and the

jurisdictional court can pass appropriate orders in it even though this order is passed by this Court. Therefore, I think, considering the entire facts and

circumstances of the case and also considering the fact that the petitioner is in custody from 15.10.2020 onwards, 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. Petitioner shall be released on bail on executing a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like

sum to the satisfaction of the jurisdictional Court.

2. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner 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.

3. Petitioner shall not leave India without permission of the jurisdictional Court.

4. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

5. The petitioner 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.

6. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is

granted by this Court.