

(2021) 05 KL CK 0005

In the High Court Of Kerala

Case No : Bail Application No. 2346 Of 2021

Shaijumon N.I. @Kochumon

APPELLANT

Vs

State Of Kerala

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, 324, 326, 341

Citation : (2021) 05 KL CK 0005

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

Bench : Single Bench

Advocate : C.S. Manu, 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. The petitioner is the accused in Crime No.1120/2021 of Chingavanam Police Station. The above case is registered originally under Sections 294(b),

324, 323 and 341 read with 34 IPC. Subsequently, the offence under Section 326 IPC is also added.

3. The prosecution case is that on 09.12.2020 at about 2.30 pm the accused Nos.1 and 2 attacked the defacto complainant and used filthy language

after wrongfully restraining him. The 2nd accused is the wife of the petitioner.

4. Heard the counsel for the petitioner and the Public Prosecutor. The counsel for the petitioner submitted that the alleged incident happened on

09.12.2020 and the FIR is lodged only on 15.12.2020 and there is absolutely no explanation for the delay. The counsel submitted that the petitioner and

the defacto complainant are neighbours. According to the counsel it is a false

case alleged against the petitioner. The Public Prosecutor opposed the bail application.

5. After hearing both sides, it is to be noted that the offence under Section 326 IPC is added subsequently. There is a delay of six days in lodging the complaint. Considering the entire facts and circumstances of the case, I think that bail 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 lot of problems and even the day-to-day life of the citizens are 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. The petitioner 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 petitioner, he shall be released on bail executing a bond for a sum of

Rs.50,000/-(Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the officer concerned;

3. 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;

4. The petitioner shall not leave India without permission of the Court;

5. The 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;

6. 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;

7. 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.