

(2020) 12 KL CK 0031

In the High Court Of Kerala

Case No : Bail Application No. 7895 Of 2020

Subair Kutty And Anr

APPELLANT

Vs

State Of Kerala And Anr

RESPONDENT

Date of Decision : 02-12-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 34, 294(b), 323, 324, 326, 354, 447

Citation : (2020) 12 KL CK 0031

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

Bench : Single Bench

Advocate : B. Mohanlal, E.C. Bineesh

Final Decision : Allowed

Judgement

1. This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. Petitioners are the accused in Crime No.2829/2020 of Karunagappally Police Station, Kollam. The above case is registered against the petitioners

alleging offences punishable under Sections 323, 324, 326, 354, 447 and 294(b) r/w 34 IPC.

3. The prosecution case is that the accused mislead that the defacto complainant spread rumors against the persons coming to his brother's daughter's

house and in animosity with the above, the accused in order to assault the defacto complainant, trespassed into the house on 14.11.2020 and attacked

her and her husband.

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

5. The counsel for the petitioners submitted that the incident is not happened as alleged by the prosecution. The counsel submitted that actually the

defacto complainant and others were the aggressors. The counsel submitted that a complaint was filed against them before the police and no case is registered. The counsel submitted that Annexures 3 and 4 are the complaints and instead of registering a complaint based on Annexures 3 and 4, Annexure 1 was registered after about five days of the alleged incident against the petitioners. The counsel submitted that the petitioners are ready to abide any condition, if this Court grant them bail.

6. The learned Public Prosecutor opposed the bail application. The Public Prosecutor submitted that the petitioners committed the offence under Section 326 IPC also.

7. After hearing both sides, I think, this bail application can be allowed on stringent conditions. There are allegations and counter allegations about the same incident. Which version is correct, cannot be decided while considering a bail application under Section 438 Cr.P.C. Therefore, I don't want to 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 him from disclosing such facts to the Court or to any police officer.
4. Petitioners shall not leave India without permission of the jurisdictional 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.