
(2020) 11 KL CK 0048

In the High Court Of Kerala

Case No : Bail Application No. 6379 Of 2020

Syam Kuttan @ Syam Raj

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 20-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 34, 294(b), 308, 324, 326

Citation : (2020) 11 KL CK 0048

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

Bench : Single Bench

Advocate : S. Sreejith, C.N. Prabhakaran

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. 664/2019 of Pangode Police Station, Thiruvananthapuram District. The above case is registered against

the petitioner alleging offences punishable under Sections 294(b), 324, 326 and 308 r/w Section 34 of the Indian Penal Code (IPC).

3. The prosecution case is that, on 28.06.2019 at about 7.20 p.m, in front of the house of the petitioner, when one Sreedharan, a relative of the de

facto complainant questioned the 2nd accused about the alleged abuse of his wife, the petitioner under the instigation of the 3rd accused attempted to

hit the defacto complainant with a sword on his head and that the defacto complainant used his hands to resist the blow and thereby he sustained

injuries. Hence, the petitioner committed the said offences.

4. Heard the learned counsel for the petitioner and the learned public prosecutor.

5. The learned counsel for the petitioner submitted that, it is a case and counter case. In both cases, the offence under Section 326 of the IPC is there.

The learned counsel submitted that the incident is not happened as alleged by the prosecution. The learned counsel submitted that one of the accused

is already released on bail by this Court, under Section 438 of Cr.P.C as is evident by Annexure-A3 order. The learned counsel submitted that the

petitioner is ready to abide any conditions, if this Court is granting him bail.

6. The learned Public Prosecutor seriously opposed the Bail Application. The learned Public Prosecutor submitted that the recovery is not effected in

this case. The learned Public Prosecutor also submitted that there is criminal antecedents against the petitioner. Three other criminal cases are already

registered against the petitioner in connection with some other incident.

The learned Public Prosecutor submitted that, let the petitioner appear before the Investigating Officer and co-operate with the investigation. There

may not be any orders under Section 438 of the Cr.P.C. This is the sum and substance of the argument of the Public Prosecutor.

7. After hearing both sides, I think this Bail Application can be allowed on stringent conditions. This is a case registered in 2019, There is no case to

the prosecution that the petitioner is absconding. Even now, the petitioner is not arrested. One of the accused is already released on bail as is evident

from Annexure-A3 order. Admittedly, it is a case and counter case. In both cases, the offence under Section 326 IPC is there. There are allegation

and counter allegation about the same incident. I cannot decide, which version is correct while considering an application under Section 438 of the

Cr.P.C. Considering the entire facts and circumstances of the case and also considering the fact that, one of the accused is already released on bail, I

think this Bail Application can be allowed on stringent conditions. It is true that the petitioner is involved in three other cases. But, in the light of the

decision of the Apex Court in Maulana Mohammed Amir Rashadi Vs. State of Uttarpradesh & Another [2012(2)SCC 382] â??merely on the basis of

criminal antecedents claims for bail cannot be rejected.â??

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 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.