IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 01ST DAY OF DECEMBER 2020 / 10TH AGRAHAYANA, 1942

Bail Appl..No.7856 OF 2020

CRIME NO. 1694 OF 2020 OF MALAYINKEEZH POLICE STATION, THIRUVANATHAPURAM

PETITIONER:

K. M. JAYAMON
AGED 47 YEARS
SON OF K. V. ALEXANDER,
PERMANENTLY RESIDING AT THUNDAYIL,
CHENGANNUR TALUK,
PANDANAD PART,
ALAPPUZHA DISTRICT,
NOW RESIDING AT A RENTED HOUSE
AT NMC BUILDING,
NEAR POLICE QUARTERS,
NEYYATTINKARA,
THIRUVANANTHAPURAM QUARTERS,
NEYYATTINKARA,
THIRUVANANTHAPURAM -695121

BY ADV. SRI.RENJIT GEORGE

RESPONDENTS:

1 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM - 682031

2 **SUB INSPECTOR OF POLICE**
MALAYANKEEZHU POLICE STATION,
THIRUVANANTHAPURAM DISTRICT,
KERALA -695571

R1 BY PUBLIC PROSECUTOR

OTHER PRESENT:

SRI.E.C.BINEESH,PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.
==========
B.A.No. 7856 of 2020
==========
Dated this the 1st day of December, 2020

O R D E R

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

2. Petitioner is the 1st accused in crime No. 1694 of 2020 of Malayinkeezh Police Station, Thiruvanathapuram District. The above case is registered against the petitioner and another alleging offences punishable under Sections 447, 323, 324, 294(b), 354 and 506 read with 34 of the Indian Penal Code (IPC).

3. The prosecution case is that, the petitioner and his wife, who is the 2nd accused in this case trespassed into the house of the de facto complainant and attacked him and his wife with iron rod causing injuries to the ribs and left palm.

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

5. The learned counsel for the petitioner submitted that, this is a case and counter case. The learned counsel submitted that, Annexure-2 is the FIR registered based on the complaint of the petitioner's wife. That is registered as crime No. 992/2020. That case was registered on 02.07.2020. The learned counsel submitted that, Annexure-1 is the FIR in this case and that is registered on 18.09.2020, whereas the alleged incident was on 01.07.2020. The learned counsel submitted that, there is a delay of 48 days in registering the present case. That itself shows that, it is a false case. The learned counsel also submitted that, even if the entire allegations are accepted. The offence under Section 354 IPC is not made out against the petitioner. The learned counsel for the petitioner also submitted that, the petitioner is ready to abide any conditions, if this Court grant him bail.

6. The learned Public Prosecutor opposed the bail

application. The learned Public Prosecutor submitted that, if this Court is granting bail stringent conditions may be imposed.

7. After hearing both sides, I think this bail application can be allowed on stringent conditions. It is a case and counter case. The only non bailable offence alleged against the petitioner is under Section 354 IPC. It is true that, there is a delay of 48 days in registering the FIR in this case. But that is a matter to be investigated by the Investigating Officer. I do not want to make any observations about the merit of the case. Considering the entire facts and circumstance 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 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.

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.

(Sd/-)
P.V.KUNHIKRISHNAN,
JUDGE

LU