IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 03RD DAY OF DECEMBER 2020 / 12TH AGRAHAYANA, 1942

Bail Appl..No.7977 OF 2020

CRIME NO.1289/2020 OF Mavelikkara Police Station , Alappuzha

PETITIONER/ACCUSED:

AJAYA KUMAR
AGED 34 YEARS
KRISHNA BHAVANAM
MATTOM NORTH
MAVELIKARA
ALAPPUZHA DISTRICT 690 103.

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
682031.

BY SRI.RENJITH.T.R., PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 3rd day of December 2020

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

2. The petitioner is the sole accused in Crime No.1289/2020 of Mavelikkara Police Station, Alappuzha District. The above case is registered against the petitioner alleging offences punishable under Sections 323, 324, 341 and Section 354 of the Indian Penal Code (IPC).

3. The prosecution case is that, on 21-10-2020 at about 7 a.m., the petitioner assaulted the father of the de facto complainant, and when the de facto complainant intervened, the petitioner assaulted her also. It is alleged that the petitioner outraged the modesty of the de facto complainant.

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

5. The learned counsel for the petitioner submitted that, the incident is not happened as alleged by the prosecution. The learned counsel submitted that, actually the injured party were the aggressors. The learned counsel submitted that, since the police is not registering a case the petitioner filed a complaint before the jurisdictional Magistrate, and that is already forwarded to the police. The learned counsel submitted that, the allegation against the petitioner are not correct, and the learned counsel also submitted that the only non bailable offence alleged against the petitioner is under Section 354 IPC. The counsel submitted that, even if the entire allegations are accepted, the offence under Section 354 IPC is not made out.

6. The learned Public Prosecutor opposed the bail application. But the learned Public prosecutor submitted that, if this Court is granting him bail, stringent conditions may be imposed.

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. While considering a bail application under Section 438 Cr.P.C., this Court cannot say which version is correct and which version is incorrect. The only non bailable offence alleged against the petitioner is under Section 354 IPC. Whether the offence under Section 354 IPC is attracted in the facts and circumstances of this case is also a matter to be investigated by the Investigating Officer. But, considering the entire facts and circumstances of this case I think, this bail application can be allowed with the following directions.

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, the petitioner shall be released on bail executing a bond for a sum of Rs.50,000/- 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.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

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