

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 09TH DAY OF DECEMBER 2020 / 18TH AGRAHAYANA, 1942

Bail Appl..No.8224 OF 2020

CRIME NO.323/2020 OF Vanchiyoor Police Station ,
Thiruvananthapuram

PETITIONER:

ALHAD K
AGED 39 YEARS, S/O.KAMALUDIN,
S.A. NIVAS, KARIYIL,
KAZHAKOOTAM P.O.,
THIRUVANANTHAPURAM 695 022.

BY ADV. SRI.J.G.SYAMNATH

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM,
PIN-682031
- 2 THE STATION HOUSE OFFICER
VANCHIYOOR POLICE STATION,
THIRUVANANTHAPURAM,
PIN-695035
- 3 REMYA VENU
AGED 38 YEARS,
D/O.SYAMALA,
SHIVA NANDHANAM, CHAVARCODE, NAVAIKULAM,
PARIPPALLY P.O.,
THIRUVANANTHAPURAM- 691 574.

SRI.RENJITH.T.R., PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
09.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.8224 of 2020

Dated this the 9th day of December, 2020

O R D E R

This Bail Application is filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the accused in Crime No.323 of 2020 of Vanchiyoor Police Station, Thiruvananthapuram. The above case is registered against the petitioner alleging offences punishable under Sections 354A(ii)(iv), 354(D), 509, 465, 468, 471 r/w. 34 IPC. The accused was arrested on 25.11.2020 and he is in judicial custody.

3. The prosecution case is that on 6.6.2019, the accused sent messages to the mobile phone of the informant promising to secure admission to the daughter of the informant for MBBS and also assured that he will get admission at KIMS and Ramaiah College of Karnataka. It is the case of the informant

that he transferred to the accused an amount of Rs.10,70,000/- for the purpose of her daughter's admission. The admission was not arranged by the petitioner. Thereafter, an amount of Rs.3,00,000/- is returned. The balance amount is not paid. This is the prosecution case in nut shell.

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

5. The counsel for the petitioner submitted that this is only a monetary dispute between the petitioner and the de facto complainant. The petitioner admit the receipt of the amount. According to him, the daughter of the de facto complainant was not eligible to get admission. Thereafter, the de facto complainant is demanding damages in addition to the amount received. The counsel submitted that no criminal offence is made out in this case.

6. The Public Prosecutor opposed the bail application. The Public Prosecutor submitted that originally the offence under Section 420 IPC was registered against the petitioner and subsequently the other offences are added because forged

documents were produced by the petitioner.

7. After hearing both sides, I think this bail application can be allowed on stringent conditions. The petitioner is in custody from 25.11.2020 onwards. It is a fact that the receipt of the amount is admitted by the petitioner and a part payment is already made by him. The de facto complainant says that there is balance amount to be paid. In such situation, whether the offence under Section 420 IPC or any other offence is made out is a matter to be investigated by the Investigating Officer. I do not want to make any observation about the merit of the case. Since the petitioner is in custody from 25.11.2020 onwards, 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. Petitioner shall be released on bail on executing a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

2. 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.

3. Petitioner shall not leave India without permission of the jurisdictional Court.

4. 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.

5. 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.

6. The petitioner shall appear before the Investigating Officer on all Mondays at 10 a.m for a period of two months.

SD/-

P.V.KUNHIKRISHNAN, JUDGE

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