

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 05TH DAY OF NOVEMBER 2020 / 14TH KARTHIKA, 1942

Bail Appl..No.7254 OF 2020

CRIME NO.941/2020 OF Angamali Police Station , Ernakulam

PETITIONER:

SHAIJU THOMAS
AGED 40 YEARS
SHAIJU THOMAS, SON OF THOMAS,
CHATHANATTU HOUSE, JOSEPURAM,
ANGAMALY
PIN-683572

BY ADV. SHRI.P.SHAIJAN JOSEPH

RESPONDENT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
PIN-682031

R1 BY PUBLIC PROSECUTOR SRI.T.R.RENJITH

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
05.11.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

O R D E R

Dated this the 5th day of November 2020

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

2. Petitioner is the accused in Crime No.941/2020 of Angamali Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 325 and 307 of IPC. The offence under Section 75 of the Juvenile Justice (Care and Protection of Children) Act is also alleged. Petitioner was arrested on 19.6.2020 and he is in custody.

3. The prosecution case is that on 18.6.2020 at 3.15 am., the accused grabbed 54 days old baby girl from the informant, gave two blows on baby's head and threw her to the cot nearby. Consequently, the infant sustained grievous hurt. The accused did these acts because of his doubts regarding the paternity of the child. It is also the prosecution case that the accused did this act because the child is a baby girl.

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

5. The counsel for the petitioner submitted that this is a

false case foisted against the petitioner because of some misunderstanding. The counsel submitted that there is no criminal antecedents to the petitioner. The counsel submitted that immediately after the incident the petitioner took the child to the hospital. The counsel submitted that no weapon is used by the petitioner. The counsel submitted that the child was suffering from some illness and the petitioner only requested the mother to give the child breast feeding. The counsel submitted that the petitioner is ready to abide any condition if this Court grant him bail.

6. The learned Public Prosecutor opposed the bail application. The Public Prosecutor submitted that the allegation against the petitioner is very serious. The small child sustained very serious injuries. The Public Prosecutor made available the wound certificate of the child. The Public Prosecutor submitted that the final report is filed and this is a case in which the accused should face trial in custody.

7. After hearing both sides, according to me, this is not a fit case, in which I can release the petitioner at this stage. The allegation against the petitioner is very serious. I perused the medical certificate also. The contentions of the petitioner can be decided only at the time of trial. This Court while considering an

application for bail cannot consider all these facts. Therefore, the petitioner is not entitled bail.

8. It is submitted by the counsel for the petitioner that there may be a direction to the trial court to expedite the trial. No such direction is necessary. The trial court will take every endeavour to dispose of the matter in accordance to law.

9. Moreover, the jurisdiction to grant bail has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in **Chidambaram P v Central Bureau of Investigation (AIR 2019 SC 5272)**. The apex court held that, the following factors are to be taken into consideration while considering the application for bail.

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

It is true that there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be decided on the basis of the facts and circumstances of that case. In the light of the general principles laid down in the above judgment and considering the facts and circumstances of this case, I am of the opinion that this is not a fit case in which the petitioner can be released on bail. Hence this Bail Application is dismissed.

Sd/-

P.V.KUNHIKRISHNAN

JUDGE

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