

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 13TH DAY OF MAY 2020 / 23RD VAISAKHA, 1942

BA NO. 1468 OF 2020

(IN CRIME NO: 174/2020 OF NOORNADU POLICE STATION, ALAPPUZHA DIST)

PETITIONERS/ACCUSED 1,3,4 AND 5

1. ABHILASH, AGED 22 YEARS,  
S/O R.A UDAYAN  
UDAYA BHAVANAM  
MATTAPPALLY, NOORNADU
2. VISHNU VIJAYAN, AGED 22 YEARS,  
S/O VIJAYAN.K,  
KATHADAYYATHU MELATHIL,  
MATTAPPALLY P.O, NOORNADU
3. HARI RAJ, AGED 30 YEARS,  
S/O RAJAN PILLAI,  
HAREESH BHAVANAM  
MATTAPPALLY P.O, NOORNADU
4. DEEPU, AGED 30 YEARS,  
S/O PUSHPAKARAN  
DEEPU BHAVANAM  
MATTAPPALLY P.O, NOORNADU

BY ADV.SRI.SUNIL KUMAR & SMT.A.SALINI LAL

RESPONDENTS/RESPONDENTS

STATE OF KERALA, REP BY  
PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM

BY P.P. SRI.B.JAYASURYA (SR) & SRI. C.K.PRASAD

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 13.05.2020,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J**

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B.A.No.1468 of 2020  
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Dated this the 13<sup>th</sup> day of May, 2020

**O R D E R**

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

2. Petitioners are accused Nos. 1, 3, 4 and 5 in Crime No.174 of 2020 of Noornadu Police Station. The above case is registered against the petitioners alleging offences punishable under Sections 143, 147, 148, 294(b), 326, 341 and 323 read with Section 149 IPC.

3. The prosecution case is that due to the property dispute between the 3<sup>rd</sup> accused as well as the defacto complainant, the accused persons forming themselves in to an unlawful assembly on 08.02.2020 at 11.45 p.m., entered the Kunnil Subramania temple ground, wherein Ganamela was going on and the 1<sup>st</sup> accused using

abusive words, kicked the defacto complainant on the left leg, the 2<sup>nd</sup> accused punched the defacto complainant using an iron bangle on his left forehead, whereby the defacto complainant sustained injuries. There are other overt act also alleged against other accused.

4. The counsel for the petitioners submitted that, it is a case and a counter case. Annexure 1 and Annexure 2 are the FIR in both the cases. The counsel for the petitioners also submitted that, the petitioners are ready to abide any condition, if this Court grant bail.

5.The learned Public Prosecutor submitted that, it is a case and a counter case. The investigation in both the cases are going on. The Public Prosecutor also submitted that, if this Court is granting bail, stringent conditions may be imposed.

6. After hearing both sides, I think this Bail Application can be allowed. It is a case and a counter case. About the same incident, there are two versions.

Which version is correct, is to be decided at the time of trial. The investigation is going on in both the cases. Considering the facts and circumstances, this Bail Application can be allowed.

7. 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.

8. 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.

9. 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 petitioners shall appear before the Investigating Officer within ten days from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose to arrest the petitioners, they shall be released on bail on 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 Petitioners shall appear before the Investigating Officer as and when required. The petitioners shall cooperate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

4. The petitioners 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 declared lock-down.

5. If any of the above conditions are violated by the petitioners, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

**P.V.KUNHIKRISHNAN, JUDGE**