

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.S.DIAS

FRIDAY, THE 24TH DAY OF APRIL 2020 / 4TH VAISAKHA, 1942

B.A. No. 1914 OF 2020

CRIME NO.268/2020 OF KUNNICODE POLICE STATION,
KOLLAM DISTRICT

PETITIONER/6TH ACCUSED:

JOTHISH,
S/O.KUNJU MON, AGED 27 YEARS,
RESIDING AT P.V.NIVAS, PLAPPALLI MURI,
NEAR POST OFFICE, UMMANNUR P.O.,
UMMANNUR VILLAGE, KOTTARAKKARA,
KOLLAM DISTRICT, PINCODE-691 520.

BY ADV. SRI.B.DIPU SACH DEV

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.
- 2 INSPECTOR OF POLICE CUM SHO,
KUNNICODE POLICE STATION, KUNNICODE P.O.,
KOTTARAKKARA SUB DIVISION, KOLLAM RURAL,
KOLLAM DISTRICT, PINCODE-691508.
- 3 SUB INSPECTOR OF POLICE,
KUNNICODE POLICE STATION,
KOTTARAKKARA SUB DIVISION, KOLLAM RURAL,
KOLLAM DISTRICT, PINCODE-691508.

SRI.AMJAD ALI, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING FINALLY HEARD ON
24.04.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER

This is an application filed under Section 439 of the Code of Criminal Procedure.

2. The petitioner is the 6th accused in Crime No. 268/2020 of Kunnicode Police Station. The petitioner and the other accused in the crime are alleged to have committed offences punishable under Sections 143, 144, 147,148, 294(b), 120(b), 341, 323, 342, 307, 302 r/w Section 149 of the Indian Penal Code.

3. The prosecution case, in brief, is that: the petitioner who is the 6th accused along with the other accused on 21.2.2020 had inflicted serious injuries on Sri.Dynish Babu. The injured succumbed to his injuries at the Medical College Hospital. The petitioner along with the 1st accused, inflicted the injuries. Thus, the petitioner and the other accused have committed the above offences.

4. The petitioner was arrested on 23.2.2020. His application for bail was dismissed by the Judicial First Class

Magistrate-III, Punalur, on 4.3.2020 as per its order in Crl.M.P. No.1267/2020.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor via video-conferencing.

6. The learned counsel for the petitioner argued that the petitioner has been in incarceration for the last 62 days. The investigation as against the petitioner is practically completed. The petitioner is innocent of the accusations levelled against him. The petitioner's continued detention is unnecessary. Hence the petitioner may be released on bail.

7. The learned Public Prosecutor opposed the application. The learned Public Prosecutor argued that the petitioner was along with the 1st accused when the incident occurred. In view of the fact that Section 120(b) is also there in the charge, the petitioner's involvement in the crime is very much there. Certain other witnesses would also have to be questioned, for which the petitioner's presence is necessary. Hence, the petitioner may not be released on bail at this stage.

8. The Hon'ble Supreme Court in ***Sanjay Chandra v. CBI [(2012) 1 SCC 40]*** held as follows:

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution".

9. Recently, the Honourable Supreme Court in ***Nikesh Tarachand Shah v. Union of India [(2018) 11 SCC 1]*** after going back to the days of the Magna Carta and after referring to ***Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565]*** has reiterated the same view in ***Sanjay Chandra v. CBI (supra)***. Again, in ***P.Chidambaram v. Directorate of Enforcement [(2019) SCC Online SC 1549]*** the above proposition has been fortified.

10. After the outbreak of the Novel Corona Virus (COVID-19) pandemic in the country, the Hon'ble Supreme Court in ***In Re: Contagion of COVID-19 Virus in Prisons case (Suo Motu Writ Petition (C) No.1 of 2020)*** observed that the issue of overcrowding of prisons is a matter of serious concern. The State Governments were directed to take adequate

measures to de-congest the prisons. Following the above direction, the Home Department, Government of Kerala has promulgated order dated 25.03.2020, *inter alia*, directing the release of under-trial prisoners alleged to have committed offences punishable with punishment for seven years or less. Later, a Full Bench of this Court by order dated 25.03.2020 in W.P.(C) No.9400 of 2020 (Suo Motu), has issued directions to de-congest the prisons in the State, keeping in mind the proposition that bail is the rule and jail is the exception.

11. Having regard to the facts and circumstances in the case, particularly the fact that that the petitioner is the 6th accused in the above crime, and he was arrested as early as on 23.2.2020 and that 62 days have elapsed after his arrest, I feel that the petitioner can be enlarged on bail on stringent conditions and that the petitioner will have to make himself available before the Investigating Agency as and when required in case any further witnesses have to be questioned and the petitioner's presence is required. In view of the legal preposition laid down by the

Hon'ble Supreme Court in the aforecited decisions and also on the directions of the Hon'ble Supreme Court and the Full Bench of this Court to de-congest prisons in view of Covid-19 pandemic, I am inclined to allow this bail application.

12. In the result this bail application is allowed, on the following conditions:-

(i) Due to the present National lock-down and the closure of Courts, the Jail Superintendent, where the petitioner is incarcerated, is directed to release the petitioner on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed sureties/immediate relatives. The petitioner shall also file an undertaking to the Jail Superintendent that he and his sureties will execute the bail bond before the jurisdictional Court within one week of its re-opening. The Jail Superintendent after ensuring the compliance of the above conditions, shall release the petitioner to the Station House Officer of the Police Station where the crime has been registered, who shall after noting down the above details, release the petitioner. The Investigating

Officer shall keep a close vigil on the whereabouts of the petitioner.

(ii) The petitioner shall within one week from the re-opening of the jurisdictional Court if not already re-opened, execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties for the like sum, each to the satisfaction of the jurisdictional Court.

(iii) The petitioner shall appear before the Investigating Officer on all Saturdays between 10.00 a.m and 11 a.m till final report is filed and also as and when required by the Investigating Officer.

(iv) The petitioner shall not tamper with the evidence or influence the witnesses in the case in any manner, whatsoever.

(v) The petitioner shall not commit any offence while on bail.

(vi) The petitioner shall not leave the State of Kerala without the permission of jurisdictional court.

(vii) Needless to mention that, if the petitioner violates any of the above conditions, the Station House Officer shall be at liberty to approach the jurisdictional Court and file appropriate application seeking for cancellation of the bail.

C.S.DIAS
JUDGE