

B.A No.2047 of 2020

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N THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.S. DIAS

TUESDAY, THE 21st DAY OF APRIL 2020/1st VAISAKHA , 1942

B.A No.2047 of 2020

(Crime No. 89/2020 of Kattakada Police station, Thiruvananthapuram District)

Petitioner/3rd Accused

Stanly John @ Saju, aged 47 years,
S/o. Stephenson, Kotaikonam Veedu,
Charupara, Kattakada P.O., Thiruvananthapuram.

By Adv. Sri. K. K. Dheerendrakrishnan
Smt. N. P. Asha

Respondents/Complainants:

1. State of Kerala represented by Public Prosecutor,
High court of Kerala, Ernakulam – 682 031.
2. Station House Officer,
Kattakada Police Station,
Kattakada, Thiruvananthapuram – 695 572.

By Public Prosecutor Sri.Amjad Ali

THIS B.A. HAVING BEEN FINALLY HEARD ON 21.04.2020, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

ORDER

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

2. The petitioner is the 3rd accused in Crime No.89 of 2020 of the Kattakada Police Station, Thiruvananthapuram. The petitioner along with the other accused are alleged to have committed the offences punishable under Sections 143, 147, 148, 447, 379, 302, 212, 201 r/w Section 149 of the Indian Penal Code.

3. The prosecution case, in brief, is that: the accused in the above crime had committed theft from the property of one Sri.Sangeeth, The accused formed an unlawful assembly and in furtherance of their common intention trespassed into the property of Sri. Sangeeth in two vehicles. In the altercation that happened, Sri. Sangeeth lost his life. Thus, the petitioner and the other accused have committed the above offences.

4. The petitioner was arrested on 28.01.2020. His application for bail was dismissed by the Sessions Court, Thiruvananthapuram on 18.02.2020 in CrI.M.C.No.383 of 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 custody since 28.01.2020. This Court by its order dated 17.04.2020 in BA No.2253 of 2020 has already granted bail to the 5th accused. The investigation in the above case is complete and no further purpose would be served in the continuous incarceration of the petitioner. Hence the petitioner may be granted bail.

7. The learned Public Prosecutor submitted that the investigation is completed. He affirmed the fact that the 5th accused has already been granted by this Court in BA No.2253 of 2020. However, he submitted that the petitioner may be enlarged on bail on stringent conditions.

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.Chidamabram 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, particularly the fact that the petitioner has been in custody since 28.01.2020; that the investigation in the case has completed; that the 5th accused has already been granted bail by this Court in BA No.2253 of 2020; that in view of the fact that there is no incriminating circumstances to reject the claim of the petitioner for bail and; also in view of the directions of the Honourable Supreme Court in the above cited decisions and 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 fifteen 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.

(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 will not enter the jurisdictional limits of the Kattakkada Police Station for a period of four months from today.

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