

B.A. NO.2139 OF 2020

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IN 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.2139 OF 2020

O.R No. 3 of 2020 of Hosdurg Forest Range (Kasargod District)

Petitioners/ Accused 2, 3 & 4

1. Damodharan A, aged 51 years
S/o. Appanu Naik
Puliyancochi, Ranipuram
Kasargod District
2. Madhusoodhan A. K, aged 33 years
S/o. Raghavan
Puliyancochi, Ranipuram
Kasargod District
3. Rajesh,aged 35 years
S/o. Narayanan Naik
Chemban Vayal, Panathady Village
Kasargod District

By Adv Sri. Rahul Sasi and Adv Smt Neethu Prem

Respondents /Complainants

1. State of Kerala, Rep. by Public Prosecutor
High Court of Kerala, Ernakulam
2. Range Officer
ForestRange,
Kanhangad

By Public prosecutor Smt.Sreeja.V.

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 petitioners are accused Nos.2 to 4 in O.R No.3 of 2020 of Hosdurg Forest Range. The petitioners are alleged to have committed the offences punishable under Sections 2(16), 2(20), 2(36), 39(d), 39(2) and 51 of the Wildlife Protection Act and Sections 27(1) e (4) of the Kerala Forest Act, 1961.

3. The prosecution case, in brief, is that: the petitioners were found in possession of the meat of Sambar Deer (*Cervus unicolor*), which is included in Schedule III of Wildlife Protection Act. Hence, the petitioners have committed the above offences.

4. The petitioners were arrested on 10.3.2020. Their application for bail was dismissed by Judicial First Class Magistrate, Hosdurg, by order dated 13.2.2020. in C.M.P. No.1340 of 2020.

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

6. Learned counsel for the petitioners argued that the petitioners

are in custody since 5.2.2020. Investigation in the above case is practically completed as against the petitioners. No purpose will be served in their continued detention. Hence they may be enlarged on bail.

7. Learned Public Prosecutor submitted that first accused, who is a notorious wildlife hunter and a history sheeter, is absconding. He has not been arrested by the police till date. However, she conceded that the petitioners were taken into police custody and investigation as regards their complicity is almost complete. Petitioners may be enlarged on bail, by imposing 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 that the petitioners are in custody since 10.3.2020 and the Investigating Officer has already got police custody of the petitioners, and investigation as against the petitioners is practically complete, and also considering the principles laid down by the Hon'ble Supreme Court quoted above, I do not find any reason for the continued detention of the petitioners in judicial custody. Hence, I am convinced that petitioners are entitled for bail on stringent conditions.

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 petitioners are incarcerated, is directed to release the petitioners on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed sureties/immediate relatives. The petitioners shall also file an undertaking to the Jail Superintendent that they and their 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 petitioners 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 petitioners. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioners.

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

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

(vi) The petitioners shall not enter the jurisdictional

limits of Hosdurg Forest Range, Kasaragod, except for the purpose of complying with condition No.(iii) in this order.

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

(viii) Needless to mention that, if the petitioners 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

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