

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 5TH DAY OF MAY, 2020 / 15TH VAISAKHA, 1942

B.A.No. 2231 / 2020

Crime No. 399/2019 of Aloor Police Station, Thrissur District

Applicant/Accused No. 1 & 3:

1. Shabeek @ Vava T.S., aged 36 years,
S/o. Shahul Hameed,
Thirunelvelikkaran House,
Pulipparakunnu Desom, P.O. Aloor,
Thrissur- 680684

2. Ratheesh @ Muri Ratheesh, aged 36 years,
S/o. Velayudhan,
Periparambil House, Manattukunnu Desom,
Kallettumkara Village, Chalakudy Taluk,
Thrissur- 680683

Adv. Vipin Narayanan

Vs.

Respondent/Complainant:

State of Kerala, represented by
Public Prosecutor,
High Court of Kerala, Ernakulam-682031.

SRI . AJITH MURALI, PP

SRI. SANTHOSH PETER, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.2231 of 2020

Dated this the 5th day of May, 2020

O R D E R

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

2. Applicants are the accused Nos. 1 and 3 in Crime No.399 of 2019 of Aloor Police Station registered alleging offences punishable under Sections 367, 341, 342, 323, 324, 326 and 307 read with Section 34 of the Indian Penal Code. The first applicant was arrested on 20.12.2019 and the second applicant was arrested on 24.12.2019 and they are in custody.

3.The prosecution case is that the accused persons kidnapped the de facto complainant on 17.07.2019 and caused him hurt by using a stone covered by a towel on various part of his body including his head and face. They kicked him and when he fell down they dragged him to the nearby property and beat him by using an iron rod.

4. The counsel for the applicants submitted that the

applicants are in custody from December 2019 onwards and they may be released on bail.

5.The learned Public Prosecutor submitted that if this Court is granting bail to the applicants, stringent conditions may be imposed.

6. Considering the facts and circumstances of the case and also taking note of the fact that the applicants are in custody from 20.12.2019 and 24.12.2019 respectively, I think 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 Superintendent of Jail concerned where the applicants are incarcerated is directed to release the applicants on bail on executing a self bond ensuring that they will appear before the Court concerned as and when required, if they are not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the applicants as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned

shall also get the phone number and the address at which the applicants would be residing after their release.

3. The Superintendent of Jail concerned, immediately after release of the applicants will forthwith forward the bail bond obtained from the applicants to the jurisdictional Court.

4. The applicants immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish their phone number and the place where they are going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the applicants and shall ensure that the applicants do not violate the terms of the undertaking.

5. The applicants shall appear before the Investigating Officer as and when required. The applicants shall co-operate with the

investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

6. The applicants shall within one week from the commencement of the functioning of the jurisdictional court, if the court is not functioning at present, execute a bond for Rs.50,000/- (Rupees Fifty Thousand only) with each with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

7. The applicants shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing and other directions in the wake of declared lock-down.

8. If any of the above conditions are violated by the applicants, the jurisdictional

Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

YKB