

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 08TH DAY OF MAY, 2020 / 18TH VAISAKHA, 1942

B.A.NO.2460 /2020

(CRIME No.199/2020 OF PALLICKATHODU POLICE STATION,  
KOTTAYAM)

APPLICANT/ACCUSED NO.2

BINEESH KUMAR, AGED 34 YEARS, SON OF DIVAKARAN,  
KOMPILACKAL HOUSE, NEARARAVINDA SCHOOL, ANICKAD VILLAGE,  
PALLICKATHODE.

BY ADVS.SRI.ABDUL RAOOF PALLIPATH, SRI.RAJ CAROLIN V.

RESPONDENTS/ COMPLAINANT

1. THE STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, 602031.
2. STATION HOUSE OFFICER, PALLICKATHODU POLICE STATION,  
KOTTAYAM DISTRICT.

SRI.AJITH MURALI, Public Prosecutor  
SRI.SANTHOSH PETER Sr.Public Prosecutor

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION  
ON 08.05.2020, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**P.V.KUNHIKRISHNAN, J.**

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B.A.No.2460 of 2020  
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Dated this the 8<sup>th</sup> 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. Petitioner is the 2<sup>nd</sup> accused in Crime No.199/2020 of Pallickathodu Police Station, Kottayam. The above case is registered against the petitioner and others alleging offence punishable under Section 25 read with Section 5, 6 of Arms Act and Section 5 of the Explosive Substances Act. The petitioner is in custody from 10.3.2020.

3. The prosecution case is that, on 10.3.2020 at 1.30 am., the police seized working parts and barrels used for the manufacturing of gun from the possession of the accused at Gayathri engineering works in Anikadu Village.

4. The learned counsel for the petitioner submitted that, he is in custody from 10.3.2020 onwards. Almost 60 days

over. Moreover, the recovery is already effected. In addition to this, the petitioner also submitted that the 5<sup>th</sup> accused is already released on bail.

5. Even though the learned Public Prosecutor opposed the bail application, submitted that, if this Court is granting bail, some stringent conditions may be imposed.

6. After hearing both sides, according to me, this Bail Application can be allowed. The petitioner is in custody for the last 58 days. The recovery of the article is already over. Some of the accused are already released on bail. In such circumstances, 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 petitioner is incarcerated is directed to release the petitioner on bail on executing a self bond ensuring that he will appear before the Court concerned as and when required, if he is not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioner 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 petitioner would be residing after his release.

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

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

5. The petitioner shall appear before the Investigating Officer as and when required. The petitioner shall co-operate with the investigation and shall not threaten or attempt

to influence the witnesses or tamper with the evidence.

6. The petitioner 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 two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

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

**P.V.KUNHIKRISHNAN, JUDGE**

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