

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.2464 of 2020

(OR No.03/2020 OF PLACHERI FOREST STATION, ERUMELI RANGE,
KOTTAYAM)

PETITIONER/ACCUSED:

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,682031.
2. FOREST RANGE OFFICER, PLACHERI FOREST STATION, ERUMELI
RANGE, KOTTAYAM.

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.

B.A.No.2464 of 2020

Dated this the 8th 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. The petitioner is the accused in O.R.No.3/2020 of Placheri Forest Station, Erumeli Range, Kottayam. The above case is registered against the petitioner alleging offence punishable under Section 47(c) and 47(g) of Kerala Forest Act. The accused was arrested on 10.3.2020.

3. The prosecution case is that, on 10.3.2020, when search was conducted in the flat of the applicant in connection with Crime No.199/2020 of Pallickachode Police Station, the police found a piece of sandal wood kept therein and thereby information was passed to the Forest Range Officer and the present O.R. is registered. The petitioner was arrested on 10.3.2020.

4. The learned counsel for the petitioner submitted that, the petitioner is innocent and he has not committed the offence. He has also submitted that, the petitioner is in custody from 10.3.2020 onwards.

5. The learned Public Prosecutor submitted that, this case was registered when a search was conducted in connection with Crime No.199/2020 of Pallickachode Police Station. In effect, the petitioner is the accused in two cases. Therefore, the learned Public Prosecutor opposed the bail application.

6. After hearing both sides, according to me, this bail application can be allowed. As far as Crime No.199/2020 of Pallickachode Police Station is concerned, I already granted bail to the petitioner today as per order in B.A.No.2460/2020. The allegation in this case is that, when the police party searched the house of the petitioner in connection with Crime No.199/2020 of Pallickachode Police Station, a piece of sandal wood is found in the house and the forest officials registered the case. Considering the period of detention and considering

the facts and circumstances of the case, I think bail can be granted in this case also.

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 lockdown.

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

skj