

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 11TH DAY OF MAY, 2020 / 21ST VAISAKHA, 1942

B.A. NO. 2541/2020

(CRIME NO: 460 OF 2020 OF PATHANAPURAM POLICE STATION IN KOLLAM DISTRICT)

PETITIONERS/ACCUSED NOS 2 TO 5 :

1. SHANAVAS KHAN, S/O UMMAR RAWUTHAR, AGED 38,
KUNNUVILA PADINJATTATHIL, KUNDAYAM.P.O,
PATHANAPURAM VILLAGE, PATHANAPURAM TALUK, KOLLAM DISTRICT.
2. MUHAMMED SHABIR S/O, SHOUKATH ALI, AGED 22 YEARS,
SHAJIR MANZIL, KUNDAYAM.P.O, PATHANAPURAM VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT.
3. JUNAID MAHEEN, S/O MAHEEN, AGED 20,
CHARUVILA VEEDU KUNDAYAM.P.O, PATHANAPURAM VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT.
4. RAHMAN, S/O IBRAHIM, AGED 20, MALANKAVIL PUTHEN VEEDU,
KUNDAYAM.P.O, PATHANAPURAM VILLAGE, PATHANAPURAM TALUK,
KOLLAM DISTRICT.

BY ADV. SRI. B.MOHAN LAL.

RESPONDENTS/COMPLAINANTS:

1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.
2. THE STATION HOUSE OFFICER, PATHANAPURAM POLICE STATION,
PATHANAPURAM, KOLLAM DISTRICT-689695

SRI. AJITH MURALI (P.P.), SRI. SANTHOSH PETER (SR.P.P.)

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A. No. 2541 of 2020

Dated this the 11th day of May, 2020

ORDER

This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. The petitioners are the accused Nos.2 to 5 in Crime No.460/2020 of Pathanapuram Police Station. Above case is registered against the petitioners and others alleging offences punishable under Sections 143, 147, 148, 341, 324 & 307 r/w Section 149 of the IPC.

3. The prosecution case is that, on 15.3.2020 at 8 pm at Kundayam, the accused 1 to 8 came in a motor cycle and a jeep, wrongfully restrained the defacto complainant. It is further alleged that the 2nd accused shouted to kill the defacto complainant, the 1st accused assaulted the defacto complainant

with an iron stick on his head, and the other accused assaulted and manhandled the defacto complainant with wooden stick and attempted to commit murder of the defacto complainant.

4. The counsel for the petitioners submitted that the main accused is the 1st accused, and he is already arrested and released on bail. The 6th accused is also arrested and released on bail. According to the counsel for the petitioners, the main overtact is against the 1st accused. He also submitted that, it is a dispute in connection with the love affair of the 1st accused and the daughter of the defacto complainant.

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

6. After hearing both sides, I think this bail application can be allowed. Admittedly, the 1st and 6th accused are already released on bail. The alleged dispute is between the 1st accused and the defacto complainant in connection with the love affair of the 1st accused and the daughter of the defacto complainant.

The recovery is already effected. Considering the facts and circumstances of the case, 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 **Writ Petition(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 petitioners shall appear before the Investigating Officer within ten days from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer proposes to arrest the petitioners, they shall be released on bail on executing separate bonds for a sum of Rs.50,000/-(Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the officer concerned.

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

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

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

5. If any of the above conditions are violated by the petitioners, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

MMG