

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. 2546/2020

(CRIME NO: 462 OF 2020 OF VALLIKUNNAM POLICE STATION IN ALAPPUZHA DISTRICT)

PETITIONERS/ACCUSED NOS 3 TO 6 :

- 1.VISHNU, S/O ASHOKAN, AGED 28,
VELLIKILETH HOUSE, ELIPPAKULAM MURI,
KATTANAM VILLAGE, MAVELIKKARA, ALAPPUZHA.DIST.
2. HILAL S/O, HASHIR ,AGED 30 YEARS,
AREEPURATHU HOUSE, ELIPPAKULAM MURI,
KATTANAM VILLAGE, MAVELIKKARA, ALAPPUZHA.DIST.
- 3.RIYAZ, S/O AHMED KUNJU, AGED 32,
RIYAZ MANZIL. ELIPPAKULAM MURI,
KATTANAM VILLAGE, MAVELIKKARA, ALAPPUZHA.DIST
- 4.NAADIM, S/O SUNIL, AGED 31, THENGUM THARYIL,
ELIPPAKULAM MURI, KATTANAM VILLAGE, MAVELIKKARA,
ALAPPUZHA.DIST.

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, VALLIKUNNAM POLICE STATION,
VALLIKUNNAM, P.O, ALAPPUZHA DISTRICT-690501

SRI. AJITH MURALI, PP
SRI. SANTHOSH PETER SR.PP

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. 2546 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 accused Nos. 3 to 6 in Crime No. 462/2020 of Vallikunnam Police Station. Above case is registered against the petitioners and others alleging offences punishable under Sections 326 and 307 read with 34 of IPC.

3. The prosecution case is that, because of the animosity regarding the publication of Facebook post in the website portal by the defacto complainant against conduct of community kitchen and welfare pension by

the Government, the accused formed themselves into an unlawful assembly. The defacto complainant along with his friends travelled in a scooter through Tazhava Mukku Choonad Road. At that time, the 1st accused driven a scooter and the 2nd accused was travelling as a pillion rider attacked the defacto complainant. The allegation is that, the 1st accused inflicted cut injuries to the defacto complainant with a weapon like chopper on his neck.

4. The counsel for the petitioners submitted that there is no specific overtact alleged against the petitioners. According to the counsel for the petitioners, the main allegation is against the 1st accused. He also submitted that, the investigation is almost over and they are ready to abide any conditions, if this Court grants bail to the petitioners.

5. The learned Public Prosecutor submitted that,

if the petitioners surrender before the police and co-operate with the investigation, he has no objection in granting bail to the petitioners. He submitted that the recovery is already over and the investigation is almost over.

6. Considering the fact that the petitioners are accused Nos. 3 to 6, and considering the fact that the main overtact is against the 1st accused, and also considering the fact that the Public Prosecutor has no objection in granting bail to the petitioners, 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 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