

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.2654 /2020

(Crime O.R. No: 2 of 2020, of Peruvannamuzhi Forest Range)

Petitioners/Accused 1 and 5:-

1. Vineeth, aged 54 years, S/o Sreenivasan, residing at Paruthipara House, Muthukad P.O, Peruvannamuzhi, Koyilandi Taluk, Kozhikode District, Pin-673 528.
2. Manu, aged 36 years, S/o Joseph, residing at Moozhayil House, Muthukad P.O, Peruvannamuzhi, Koyilandi Taluk, Kozhikode District, Pin-673 528.

By Sri.J.R.Prem Navaz

Respondent/State:-

1. State of Kerala, Represented by the Public Prosecutor, High Court of Kerala, Ernakulam 682 031.
2. Forest Range Officer, Peruvannamuzhi Forest Range, Kozhikode District.

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.2654 of 2020

Dated this the 11th day of May, 2020

O R D E R

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

2. Petitioners are 1st and 5th accused in Crime OR No. 2 of 2020 of Peruvannamuzhi Forest Range registered alleging offences punishable under Sections 2(16), 2(20), 2(31)(b), 39, 49A (b), 49B, 50 and 51 of the Wild Life (Protection) Act, 1972.

3.The prosecution case is that the flesh of Sambar Deer (Schedule III Animal) was recovered from the residence of the 4th accused. He was arrested and remanded and based on his confession statement it is

revealed that the petitioners are the source.

4. The counsel for the petitioners submitted that the maximum punishment that can be imposed for the offence alleged are below 7 years. He also submitted that he is implicated in this case based on the confession statement of 4th accused. He also submitted that no articles seized from his possession.

5.The learned Public Prosecutor submitted that the interrogation of the petitioners is necessary to find the source. But he conceded the fact that the maximum punishment that can be imposed for the offence alleged in this case are below 7 years. He also submitted that there is no criminal antecedents against the petitioners herein.

6.After hearing both sides, I think this bail application can be allowed. The petitioners are implicated based on the statement of co-accused. Of

course, the statement of a co-accused to a forest official is admissible to some extent. But, there cannot be any conviction based on the sole evidence of confession of the co-accused in a forest offence. Moreover, the maximum punishment that can be imposed for the offences alleged against the petitioners are below 7 years. It is also to be noted that no article is seized from the petitioners. It is also to be noted that there is no criminal antecedents pointed out by the prosecution against the petitioners. In the facts and circumstances, 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 petitioners shall appear before the

Investigating Officer within ten days from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose to arrest the petitioners, they shall be released on bail executing a bond 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 petitioner 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 petitioner 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

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