

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.2660 /2020

(IN CRIME No.486/2019 OF CHAVAKKAD POLICE STSTION, THRISSURE DISTRICT)

Petitioner/Accused No.10 :-

1. Muhammed Shafi @ Shafi, aged 30 years,
S/o.Sayidumuhammed, Vaderi Veedu,
Jhamanengad Desom, Vadakkekadav Village,
Thrissur District.

By Adv.Sri.Haris E.A

Respondent/Complainant

1. State of Kerala, represented by
Public Prosecutor, High Court of Kerala,
Ernakulam.

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

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

ORDER

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. The petitioner is the 10th accused in Crime No.486 of 2019 of Chavakkad Police Station registered alleging offences punishable under Sections 143, 147,148,153,324,326,307,506(ii),120B,114,201,212 and 302 r/w Section 149 of the Indian Penal Code. Petitioner was arrested on 06.03.2020 and he is in custody.

3. The prosecution case is that on 30.07.2019 at about 6.00 p.m., due to the previous animosity the petitioner along with 15 others were formed themselves in to an unlawful assembly armed with deadly weapons and in prosecution of their common object of committing murder of the deceased, they attacked him with swords and the deceased sustained serious injuries and succumbed to the injuries. The petitioner was arrested on 06.03.2020 and he is in custody even now.

4. The learned counsel for the petitioner submitted that the accused numbers 3,5,6 and 8 were already released on bail by this Court and accused Nos. 1,2,4 and 7 were released on bail by the Sessions Court. It is submitted that even though an application was filed by the Prosecution to cancel the bail of accused numbers 1,2,4 and 7 before this Court, the same was not disposed of. Pending that application, this Court granted bail to accused Nos. 3 and 8 in B.A.(TMP) No.18 of 2020.

5. The learned Public Prosecutor submitted that what is stated by the learned Counsel for the petitioner is correct and some of the accused were released on bail even though the petition for cancellation of bail is pending before this Court against the main accused.

6. After hearing both sides and after considering the facts and circumstances of the case, I think this Bail Application can be allowed. It is true that the main accused were granted bail and the same was challenged before this Court by filing separate petitions for cancellation of bail and the same are pending. But pending those petitions, this Court

granted bail to accused numbers 3 and 8 in B.A. (TMP) No. 18 of 2020. In such circumstances, I think, the petitioner who is the 10th accused, is also entitled to bail.

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 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

pkk