

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 13TH DAY OF MAY 2020 / 23RD VAISAKHA, 1942

BA NO.2675 OF 2020

(Crime No.169/2020 of Kalamassery Police Station, Ernakulam District)

Petitioners / Accused nos.1,3, 8 to 11

1. Thomas George, aged 68 years, S/o. George John, Managing Director, Whispower Generator Sales and Services Pvt Ltd, Neelampilalil house, Maradu P.O, Ernakulam, Pin 682304.
2. Martha Jose, W/o. Ryon Jose, aged 27 years, residing at Neelampilalil house, Maradu P.O, Ernakulam
3. Rubinkumar, aged 35, S/o. Baby PS, Pottassery house, Puthuvypu PO, Vypeen, Ernakulam
4. Sarath PV, aged 40, s/O. Velugopal K.B, Puraikkalakath house, Erumathala P.O, Chunamgamveli, Aluva Pin 683112
5. Antony. A J, aged 40, s/O. Joseph, Appaparambil house, Nadakkavu P.O, Udayamperoor, Ernakulam.
6. Santhosh V.R., aged 45 years, S/o.Ramachandran, Vakayil house, Nandikulangara, Mannam P.O., North Paravoor – 683520.

By Adv. Geo Paul, Sanu Mathew, C.R.Pramod, Radhika Rajasekhran,
Naveen.TU

Respondent/Complainant

1. State of Kerala Represented by Public Prosecutor, High Court of Kerala, Ernakulam 682031
2. Inspector of Police, Kalamassery Police station, Kalamassery, Pin 683104

By P.P. Sri.B.Jayasurya (Sr) & Sri. C.K.Prasad

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
13.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A.No.2675 of 2020

Dated this the 13th 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 accused Nos.1, 3 and 8 to 11 in Crime No.169 of 2020 of Kalamassery Police Station registered alleging offences punishable under Sections 454 and 380 read with Section 34 of the Indian Penal Code.

3.The prosecution case is that, at 1.30 pm, on 08.03.2020, the accused in furtherance of their common intention committed trespassed into B.S. International, situated in building no.39/396, Industrial Area, Kalamassery Municipality and thereafter, committed theft of motors, bearings, tool box etc. after removing CCTV Camera from its premises and thereby accused committed the offences under Sections 454 and 380 read with Section 34 of the Indian Penal

Code.

4. The counsel for the petitioners submitted that the case against the petitioners are false and no such incident was happened. The counsel for the petitioners submitted that the Judicial First Class Magistrate, Kalamassery while considering the bail application of the 2nd accused (wrongly mentioned as A1 in Annexure A1 order), considered all the aspects in detail and passed a detailed order. Annexure A1 is the order. The counsel for the petitioners submitted that, in paragraph 6 of the Annexure A1 order, the entire case is considered by the learned Magistrate and granted bail to the second accused who is wrongly mentioned as 1st accused in Annexure A1 order. The counsel for the petitioners read out paragraph 6, which is extracted here under:-

“6.Having heard both sides and perusing the records, it is evident that the present case was registered on the basis of a petition filed by the defacto complainant before the Kalamassery Police Station on 09.03.2020. As submitted by the learned counsel for A1, it is evident that father of the accused had lodged a complainant before this court against the defacto complainant and

other persons and the same was forwarded to the Station House Officer, Kalamassery for investigation under section 156(3) of the Cr.P.C. Pursuant to, Crime No.135/2020 was registered against the defacto complainant herein and other 3 accused. The defacto complainant herein is arrayed as accused No.2 in the aforesaid Crime. Therefore, it is evident that the present Crime No.169/2020 was registered after registration of Crime No.135/2020. The alleged incident in Crime No.169/2020 occurred at 1.30 pm on 08.03.2020. It shows that defacto complainant made the petition after registration of Crime No.135/2020 of Kalamassery Police Station. Therefore, the contention raised by the learned counsel for accused that the registration of Crime No.169/2020 was with a view to counter the case filed by father of the accused herein, prima facie, cannot be rejected at the threshold. Further, as per the agreement produced by the learned counsel for accused, it is evident that the defacto complainant herein had taken a portion of the building on rent, wherein the accused and his parents are also conducting manufacturing unit. As per the copy of the orders of the Honourable High Court in Bail application No.9399/2019 dated, 07.01.2020 the Managing Director of the company was granted anticipatory bail. Copy of the interim injunction orders produced by the learned counsel for accused shows that there is civil dispute

between the parties and they are still pending consideration of the Munsiff Court concerned. One of the grounds urged by the learned Assistant Public Prosecutor to oppose the bail application is that Investigating Officer has to conduct search and seize copper binding wires and office documents, which are allegedly stolen away by A1 and other accused. However, upon perusing the report of the Investigating Officer and the records available before the court, it is evident that the Investigating Officer has conducted search in the building and seized the articles without warrant. After hearing both sides and perusing the records, it is prima facie evident that the Investigating Officer has seized various articles from the business premises of the same building itself on the search conducted by him without warrant. In order to ascertain the necessity of keeping the accused in custody, this court directed the learned Assistant Public Prosecutor to produce the Case diary in this case. As instructed, the Investigating Officer appeared before the court and submitted that the Case diary was submitted before the Commissioner of Police and further assured that he would produce the Case diary before 5.00 pm today. However, he did not produce it, till 5.10 pm today, the time at which the bail application is disposed of. Non-production of Case diary before the court, despite directions issued by the court, prima facie appears to be

suspicious. Today, no custody application is seen filed before the court. Therefore, requirement of the prosecution that custody of accused is required for conducting search lacks bonafides. Hence, solely on that reason the accused can not be detained in custody further. All other apprehensions of the prosecution can be safeguarded by imposing stringent conditions on the accused. Prosecution has also no case that the accused has criminal antecedents. In the above circumstances and on the aforesaid reasons, I find that further custody of the accused is not required in this case and he can be released on bail however, subject to conditions:-"

The counsel for the petitioners submitted that in the light of the above facts, the petitioners are entitled bail under Section 438 of the CrPC.

5.The learned Public Prosecutor opposed the bail application and submitted that the petitioners committed serious offence. According to the learned Public Prosecutor, prima facie, there is materials to show that the petitioners committed the offence punishable under Section 454 of the Indian Penal Code. The learned Public Prosecutor also submitted that the petitioners and other accused had

committed theft of article worth Rs.67 lakhs. The learned Public Prosecutor specifically opposed the bail application of the 1st accused, who is the 1st petitioner herein. The learned Public Prosecutor submitted that as per Annexure A5 order, this Court granted bail to the 1st petitioner and others in Crime No. 1627 of 2019, Kalamassery Police Station. That was also a case registered under Section 379 of the Indian Penal Code. One of the condition in the bail order is that, the the petitioner in that case will not committed similar offences. Subsequently, the present case is registered against the 1st petitioner and hence, he violated the conditions imposed by this court and therefore, he is not entitled to bail.

6. I heard the learned counsel for the petitioners and the learned Public Prosecutor. As far as the 1st petitioner is concerned, I am not inclined to exercise my jurisdiction under Section 438 of CrPC. It is an admitted case that, now the 1st petitioner is involved in a theft case and as per Annexure A5 order, this Court granted him anticipatory bail on condition that, he will not commit similar offence. Thereafter, the

petitioner involved in the present case, which is registered by the same Police Station as Crime No. 169 of 2020. Therefore, I am not inclined to exercise my extra ordinary jurisdiction under Section 438 of CrPC to release the 1st petitioner. After going through the order passed by the Learned Magistrate while granting bail to the 2nd accused (the relevant portion is extracted above), I think petitioners nos. 2 to 6 can be granted bail. They are Accused Nos.3 and 8 to 11. I am not making any further comments about the merits of the case. The learned Magistrate in Annexure A1 order considered the case in detail. I make it clear that the observation of the learned Magistrate regarding the case is only for the purpose of deciding the bail application. For that purpose, I am also considered the merits of the case in brief. In the facts and circumstances of the case, bail can be granted to petitioners nos. 2 to 6.

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, the Bail Application of petitioners nos.2 to 6 is allowed with the following directions:

1. The petitioners nos.2 to 6 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 nos.2 to 6, they shall be released on bail on 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 petitioners nos.2 to 6 shall appear before the Investigating Officer as and when required. The petitioners nos.2 to 6 shall cooperate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

4. The petitioners nos.2 to 6 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 nos.2 to 6, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is

granted by this Court.

The bail application of the 1st petitioner is dismissed.

P.V.KUNHIKRISHNAN, JUDGE

YKB