

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.2683 OF 2020

(Arising from FIR No. 0339 of 2020 of Tirur Police Station, Malappuram District)

Petitioners/ Accused 1 to 5

1. Ali
S/o Kunjappu, Aged 50 years,
Pilakkal House, Thazhathara,
Thirunavaya, Tirur,
Malappuram-676 301
2. Muhammed,
Aged 58 years, S/o
Parambil House, Thazhathara
Thirunavaya, Tirur,
Malappuram-676 301
3. P.Abdul Salam @ Bappu,
Aged 38 years, S/o Mohammedkutty
Thekke Peediyekkal House, Thazhathara
Thirunavaya, Tirur, Malappuram-676 301
4. Ashraf,
Aged 45 years, S/o Moideen,
Athani Parambi House, Thazhathara
Thirunavaya, Tirur, Malappuram-676 301
5. Nasar,
Aged 48 years, s/o Saidalu,
Mullappattil House, Thazhathara
Thirunavaya, Tirur, Malappuram-676 301

By Advs. N.KRISHNA PRASAD

Respondents/State

1. The State of Kerala.
Represented by Public Prosecutor,
High Court of Kerala,
Ernakulam- 682 031

2. The Station House Officer,
Tirur Police Station,
Malappuram- 676 101

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.2683 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 the accused in Crime No.339 of 2020 of Tirur Police Station, Malappuram registered alleging offences punishable under the provisions of the Kerala Protection of River Bank and Regulation of Removal of Sand Act, 2001 and Kerala Epidemic Diseases Ordinance, 2020 and under Section 379 of Indian Penal Code.

3.The admitted prosecution case is that, on 18.4.2020 at 11.00pm, when the Police party who is

conducting a search, found the petitioners keeping sand in a sack. The petitioners ran away from the place.

4. The counsel for the petitioners submitted that, the petitioners have not committed any offence. He also submitted that, the petitioners are alleged to be identified based on a torch light. He also submitted that, even if, the allegations are accepted no offence under Section 379 of IPC is made out. The learned counsel for the petitioners submitted that, all other offences alleged against the petitioners are bailable.

5. The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor submitted that, in that area, illegal sand mining and theft of sand is continuing. Therefore, the Police is vigilant and when a search was conducted, the petitioners were identified. In such circumstances, custodial interrogation of the petitioners are necessary and hence, this court may not

grant bail under Section 438 of Criminal Procedure Code.

6. After hearing both sides, I think, this bail application can be allowed. Admittedly, all the offences alleged against the petitioners except Section 379 of IPC is bailable. The admitted case is that the Police party found the petitioners filling the sand in a sack. Whether, it amounts to a theft under Section 379 of IPC is a question to be decided by the Court. Explanation 1 to 5 of Section 378 says in which circumstances it can be presumed that a theft is committed. Whether, the action of the petitioners will come within the purview of explanation 1 to 5 is a point to be decided by the trial court, for which, the custodial interrogation of the petitioners may not be necessary. Therefore, 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 **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 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.

6. The petitioners shall not commit similar offences.

P.V.KUNHIKRISHNAN, JUDGE