

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.2687 OF 2020

(IN CRIME NO. 458/2020 OF ANCHAL POLICE STATION, ANCHAL,
KOLLAM RURAL DISTRICT)

PETITIONER/ACCUSED NOS (1 TO 3)

- 1) SHYAM, AGED 30 YEARS, S/O. RAJENDRA BABU,
KALEECKAL VEEDU, ALAMCHERRY, EROOR P.O, KOLLAM
- 2) RETNA CHAND.R, AGED 50 YEARS, S/O. RAGHAVAN PILLAI,
BEENA NIVAS, ALAMCHERRY, EROOR P.O, KOLLAM.
- 3) AJAYAKUMAR.N, S/O. NARAYANA PILLAI,
AJAYA BHAVAN, ALAMON P.O, ALANCHERRY, KOLLAM DISTRICT.

BY ADV. SRI. TONY THOMAS (INCHIPARAMBIL)

RESPONDENTS/COMPLAINANTS:

1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.
2. THE SUB INSPECTOR OF POLICE,
ANCHAL STATION,

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.2687 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 and 3 in Crime No.458 of 2020 of Anchal Police Station. The above case is registered against the petitioners alleging offences punishable under Sections 341, 353 and 506(ii) read with Section 34 IPC.

3. The prosecution case is that when a Civil Police Officer attached to Anchal Police Station came to record the statement of one Rajamma, in connection with a complaint dated 23.03.2020, which was filed by her against her son-in-law, the petitioners restrained and intimidated him and thereby obstructed him from

discharging his duties.

4. The counsel for the petitioners submitted that a person, without uniform, entered the house of Rajamma. He is not coming back. Therefore, the 2nd and the 3rd petitioner called the 1st petitioner, who is a media person, and entered the house. At that time, the person was recording the statement of Rajamma. It is also admitted case that, the person was recording the voice of Rajamma in a mobile. Then, the petitioners questioned the person and he disclose that, I am a police officer. Even then, the petitioners obstructed the official duty of the defacto complainant.

5.The learned Public Prosecutor opposed the bail application. The Public Prosecutor submitted that a police officer was doing his duty and he even disclosed his identity to the petitioners. Even then, the petitioners obstructed the defacto complainant in doing his official duty.

6. After hearing both sides, I am not in a position to accept the action of the petitioners. It is to be noted that the 1st petitioner is a local reporter of Media One Channel. The second petitioner is an agriculturalist and the third petitioner is a meter reader staff in Kerala State Electricity Board. The petitioners have entered the house of Rajamma and questioned the defacto complainant. Rajamma has no case that the defacto complainant illegally entered the house and recorded her version. In such situation, what is the right of the petitioners to enter the house and question the defacto complainant, especially when it is a admitted fact that the defacto complainant disclosed his identity. The defacto complainant disclosed that, he is a police officer and recording the statements, as directed by his superior, in connection with a criminal case. In such situation, the action of the petitioners can be only termed as moral policing. Hence, I am not in a position to accept the

action of the petitioners. But it is to be noted that the only non-bailable offence alleged against the petitioners is the offence under Section 353 IPC. The maximum punishment that can be imposed under Section 353 IPC is only two years. The Apex Court and this Court observed that, in offences in which maximum punishment that can be imposed is below seven years, the bail applications should be considered liberally. In the light of the facts and circumstances of this case, even though, I am not satisfied about the alleged acts of the petitioners, I am allowing this Bail Application.

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 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 shall appear before the Investigating Officer as and when required. The petitioners shall cooperate 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 with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

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