

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 15TH DAY OF MAY 2020 / 25TH VAISAKHA, 1942

BA NO.2706 OF 2020

(In Crime No. 445 / 2020 of Edathwa Police Station in Alappuzha District)

PETITIONERS / ACCUSED -A 1 to 3

1. **Jayaprasad**, aged 30 years,  
S/o Mohanan,  
70-il Chira, Changankary P.O., Edathwa,  
Alappuzha District.
2. **Sarath**, aged 32 years,  
S/o Leela,  
Karukayil Koilmukku,  
Pandakary P.O.,  
Edathwa, Kuttanad,  
Alappuzha District.
3. **Omanakuttan**, aged 36 years,  
S/o Mukundan,  
Naalichira,  
Koonthirickal P.O.,  
Thalavady, Alappuzha District.

By Adv. Sri. K.V.Anil Kumar

RESPONDENTS / STATE & COMPLAINANT

1. State of Kerala represented by the Public Prosecutor,  
High Court of Kerala, Ernakulam.
2. Station House Officer,  
Edathwa Police Station, Alappuzha District.

By P.P. Sri.B.JAYASURYA (SR) & C.K.PRASAD

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 15.05.2020,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J**

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B.A.No. 2706 of 2020  
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Dated this the 15<sup>th</sup> day of May, 2020

**O R D E R**

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

2. Petitioners are accused 1 to 3 in Crime No.445 of 2020 of Edathwa Police Station registered alleging offences punishable under Sections 341, 324, 308 read with Section 34 of IPC.

3. The prosecution case is that, due to prior enmity towards the defacto complainant, on 25.4.2020 at 9.45am, the petitioners reached the petty shop of the injured and caught hold of his shirt and accused no.1 and 3 restrained him, and at that time 2<sup>nd</sup> accused

attacked him with a knife and thereby sustained injuries to the defacto complainant.

4. The counsel for the petitioner submitted that the petitioners surrendered before the court on 26.4.2020. The investigation of the case is almost over. They are ready to abide any conditions if this court grant bail.

5.The learned Public Prosecutor submitted that if this court is granting bail to the petitioner stringent conditions may be imposed.

6. Considering the facts and circumstances of this case and considering the fact that the petitioners are in custody from 26.4.2020 and also considering the submission of the Public Prosecutor, 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 Superintendent of Jail concerned where the petitioners are incarcerated is directed to release the petitioners on bail on executing a self bond ensuring that they will appear before the Court concerned as and when required, if they are not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioners 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 petitioners would be residing after their release.

3. The Superintendent of Jail concerned, immediately after release of the petitioners will forthwith forward the bail bond obtained from the petitioners to the jurisdictional Court.

4. The petitioners immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish their phone number and the place where they are going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioners and shall ensure that the petitioners do not violate the terms of the undertaking.

5. 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.

6. The petitioners 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 petitioners 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 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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