

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.2710 OF 2020

(In Crime No.268/2020 of Kunnikode Police Station)

(Kollam District))

Petitioner/4<sup>th</sup> Accused

Binu, aged 41,  
S/o. Thulaseedharan Achari,  
Thulasi Vilasom, Chakkuvarakkal Muri,  
Chakkuvarakkal Village.

By Advocates:

P.V. VIBIN  
HABEEBA MOOSA  
N.S HASNA MOL (K/325/2015) (H.289)

Respondent

State of Kerala,  
Represented by the Public Prosecutor,  
High Court of Kerala,  
Ernakulam – 682 031.

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.2710 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. Petitioner is the accused in Crime No.268 of 2020 of Kunnikode Police Station registered alleging offences punishable under Sections 143, 144, 147, 148, 120(b), 294(b), 341, 323, 324, 307, 302 read with 149 of Indian Penal code.

3.The prosecution case is that, due to the previous animosity towards deceased, accused 1 to 7 formed themselves into an unlawful assembly and committed murder of one Dynish. According to the prosecution case, the 1<sup>st</sup> accused inflicted the fatal injury. The

allegation against accused 2 to 5 is that, they slapped and kicked the deceased.

4. The counsel for the petitioner submitted that the main overt act is against the 1<sup>st</sup> accused. He also submitted that, the petitioner is arrested on 25.2.2020 and he is in custody for last about 85 days. The counsel for the petitioner also submitted that accused no. 2,3 5, and 7 were already released on bail.

5. Considering the facts and circumstances of this case, the learned Public Prosecutor fairly submitted that the bail application can be allowed on stringent conditions, especially for the reason that the other accused against whom the similar allegations is there like the petitioner is already released on bail.

6. Considering the facts and circumstances of this case, and considering the fact that the accused no 2, 3, 5 and 7 are already released on bail and also considering the fact that, the petitioner is in custody

from 25.2.2020, I think this bail application can be allowed. I also noted the fact that the allegations against the petitioner is only slapping and kicking the deceased and no dangerous weapon used by the petitioner, even as per the prosecution case. Considering the facts and circumstances of this case, 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 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/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 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.

7. The petitioner shall report before the Investigating Officer on all Mondays at 10.00am till final report is filed in Crime No.268/2020.

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**

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