

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 12TH DAY OF MAY 2020 / 22ND VAISAKHA, 1942

BA NO. 2726 OF 2020

(In Crime No. 611/2020 of Valappad Police Station, Thrissur District)

PETITIONERS/Accused 1 to 4:-

1. Salim Divakaran,
Aged 54 years, S/o. Divakaran,
Vyloppilly House, Kizhikkadavu Desom,
Valappad Village and Post, Thrissur.
2. Najeeb,
Aged 44 years, S/o. Moosa,
Puthiyaveetil House, Muriyamthodu,
Valappad Village and Post, Thrissur.
3. Shafeeq,
Aged 33 years, S/o. Khadar,
Kottungaparambil House, Chethrappinni Desom,
Edathiruthi Village, Thrissur.
4. Sreenath,
Aged 32 years, S/o. Gopinath,
Karimchetta House, Painur Desom, Edathiruthi Village, Thrissur.

By Advocates Sri. Dr. K.P. Satheesan (Sr.), P. Mohandas, K. Sudhinkumar,
S.K. Adhithyan & Sabu Pullan

Respondent/State & Complainant:-

1. State of Kerala,
Represented by the Public Prosecutor,
High Court of Kerala, Ernakulam, Kochi - 682 031.
2. The Sub Inspector of Police,
Valappad Police Station, Thrissur District, Pin. 680 567.

By P.P. Sri.Ajith Murali & Santhosh Peter(Sr)

**THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 12.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

P.V.KUNHIKRISHNAN, J

B.A.No.2726 of 2020

Dated this the 12th 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 nos. 1 to 4 in Crime No.611 of 2020 of Valappad Police Station registered alleging offences punishable under Section 55(g) of the Abkari Act.

3.The prosecution case is that on 16.4.2020 at about 9.00pm the 2nd respondent noticed that the petitioners are keeping Wash in a room. It is on the basis of the said allegation that, 60 liters of Wash was seized from a room near to Valappad School ground.

4. The senior counsel appeared for the petitioner

submitted that the petitioners are not involved in the case. The contraband articles are seized from a place which has no connection to the petitioners. He also submitted that petitioners 1 to 3 were arrested on 16.4.2020 and 4th petitioner was arrested on 17.4.2020. He is ready to abide any conditions if this court grant bail.

5.The learned Public Prosecutor concedes that the petitioners No. 1 to 3 were arrested on 16.4.2020 and 4th petitioner was arrested on 17.4.2020. He submitted that, if this court grant bail to the petitioner stringent conditions may be imposed.

6.After considering the contentions of the petitioner and the learned Public Prosecutor, I think, this bail application can be allowed. The petitioners are in custody from 16.4.2020 and 17.4.2020 respectively. The quantity of Wash alleged to be seized is 60 liters.

The petitioners have got a case that they have no connection with the contraband seized. Of course, this matter is to be decided at the time of trial. Considering the facts and circumstances of this case, I think, the bail application can be allowed to the petitioners.

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

ska