

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.2753 OF 2020

(Crime No.77/2020 of Pulikeezhu Police Station, Pathanamthitta District)

Petitioners/Accused Nos.2 and 4:

1. Mathukutty @ Monachan, aged 53 years,
S/o.Jessy, Thunduparambil House,
Parumala P.O, Kadapra Village,
Thiruvalla Taluk, Pathanamthitta District.
2. Joshy James, aged 31 years,
S/o.James, Kandanadu House,
Kattoor P.O, Kalavoor,
Alappuzha District.

By Adv. Sri. Joseph George

Respondent/Complainant:

State of Kerala rep.by Station House Officer,
Pulikeezhu Police Station,
Pathanamthitta District,
Rep.by Public Prosecutor,
High Court of Kerala, Ernakulam.

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.

B.A.No.2753 of 2020

Dated this the 15th 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 2nd and 4th accused in Crime No.77 of 2020 of the Pulikeezhu Police Station registered alleging offences punishable under Sections 447, 427, 323, 324 and 326 r/w Section 34 of the Indian Penal Code.

3. The prosecution case is that due to prior enmity towards the defacto complainant, in furtherance of their common intention, the accused attacked the defacto complainant by which the defacto complainant sustained grievous hurt.

4. The learned counsel for the petitioners submitted that there is no serious overtact alleged against the petitioners, who are 2nd and 4th accused. The main allegation against the 1st petitioner is that he used a brick to assault the defacto complainant and the allegation against the 2nd petitioner, who is

the 4th accused is that he used hands. Considering the fact that there is no serious allegation against the petitioners, I think this bail application can be allowed as far as these petitioners are concerned. I make it clear that I considered the bail application of the 2nd and 4th accused alone and other accused case may be standing on different foot. Hence the bail application of the petitioners is allowed.

5. 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.

6. 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.

7. 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 petitioner 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.

**P.V.KUNHIKRISHNAN
JUDGE**

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