

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.2754 OF 2020

(Crime No 81/2020 of Peruvannamuzhi Police Station, Kozhikode District)

Petitioner/Accused :-

Vinoy N M, Nellimala House, Muthukad Post, Peruvannamuzhi
(via), Kozhikode- 673528.

By Adv Nidhi Balachandran & Sabu George

Respondents:-

1. State of Kerala represented by the Public Prosecutor, High Court of Kerala, Ernakulam-682031.
2. Station House Officer, Peruvannamuzhi Police Station, Kozhikode-673 526.

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:**

ORDER

This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. The petitioner is the accused in Crime No.81 of 2020 Peruvannamuzhi Police Station registered alleging offences punishable under Sections 3 and 25(1B) (a) of the Arms Act.

3.The prosecution case is that on 16.3.2020 the Forest officials conducted a search in the house bearing number 102 owned by petitioner's father and recovered a country gun and 150 grams of lead balls in different sizes. The petitioner was included as an additional accused in O.R. No.1 of 2020 which was registered by the Forest officials. This case is separately registered under the Arms Act.

4. The learned counsel for the petitioner submitted that the alleged seizure of the country gun is from the house of the father of the petitioner and the petitioner's house number is 102A and the house number of the petitioner's father is 102. The learned counsel for the petitioner submitted that he is

ready to abide any conditions if this Court grant him bail.

5.The learned Public Prosecutor opposed the Bail Application. He submitted that, if this Court is granting bail to the petitioner, stringent conditions may be imposed on the petitioner, because he is an accused involved in O.R. No.1 of 2020 which is registered under the Wild Life Protection Act.

6.After hearing both sides and considering the facts and circumstances of the case, I think, this Bail Application can be granted. The allegation in this case is that a country gun and 150 grams of lead balls were seized from a house bearing number 102. According to the petitioner his house number is 102A and the house bearing number 102 is the house of his father. These are the matters to be investigated by the Police and I am not in a position to say at this stage that the petitioner was not in conscious possession of the country gun. The petitioner has to produce materials before the Investigating Officer and before the trial court concerned.

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 petitioner 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 petitioner, he 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 petitioner shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

4. The petitioner 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 petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

pkk