

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.2796 OF 2020

(Occurrence Report No: 4/2020 of Silent Valley Forest Station, Palakkad
District)

Petitioner/Accused :

Munavvarul Fairoose,
Aged 29 years, S/o. Usman Kunnath,
Kunnath House, Pallisseri, Kalikavu,
Malappuram-676525.

By Adv. Sri. Leo Lukose

Respondents

State of Kerala,
Represented by Public Prosecutor,
High Court of Kerala, Ernakulam
(Through the Forest Range Officer,
Silent Valley Forest Station, Palakkad 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:

ORDER

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

2. The petitioner is one of the accused in OR No.4 of 2020 of Silent Valley Forest Station registered alleging offences punishable under Sections 9, 39, 51 and 52 of the Wild Life Protection Act and Section 27(1) (e) of the Kerala Forest Act.

3. The prosecution case is that on 01.04.2020, at 11 am, while the forest range officer and party were patrolling along Cherumba hill range, the petitioner and other accused were found sitting on a rock. Seeing the officers, he ran away. On inspecting the site, remains of wild meat and utensils were recovered. Hence, according to the prosecution the case is registered.

4. The counsel for the petitioner submitted that the petitioner is not involved in the case. Some neighbours who are on enimical terms with the petitioner implicated him in the case. Actually he was not in the scene of occurrence.

5. The learned Public Prosecutor submitted that the forest

officials identified the accused based on the statement of the neighbours. The learned Public Prosecutor opposed the bail application.

6. After hearing both sides, according to me this bail application can be allowed. This is a case in which there is a dispute regarding the identify of the accused. Of course this is a matter to be decided in the trial. But, when the petitioner raise a dispute regarding the identity, it is a matter to be considered at this stage. Moreover, the contraband articles were already recovered and no custodial interrogation of the petitioner is necessary. Moreover, as per order dated 06.05.2020 in B.A. (TMP) No.57 of 2020, this Court granted anticipatory bail to the co-accused in this case. In such circumstances, the bail application can be granted to the petitioner.

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 on executing a bond for a sum of Rs,.50,000/-(Rupees Fifty

Thousand only) each 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 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