

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.2803 OF 2020

(Cr. No 73/2020 of Perambra Police Station, Kozhikode)

PETITIONER/ACCUSED NO 1 :-

JUNAID, S/O ABDURAHIMAN, AGED 22 YEARS, PUTHALATH
HOUSE, AVADUKKA (P.O.), CHANGAROTH- 673528.

BY ADV.SRI.NIDHI BALACHANDRAN

RESPONDENTS :-

1. STATE OF KERALA REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM- 682031.
2. THE STATION HOUSE OFFICER, PERAMBRA POLICE
STATION,
KOZHIKODE-673525.

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:

B.A.No. 2803 of 2020

2

P.V.KUNHIKRISHNAN, J

B.A.No. 2803 of 2020

Dated this the 15th day of May, 2020

ORDER

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the first accused in Crime No. 73 of 2020 of Perambra Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 341, 323, 324, 326 and 307 read with Section 34 IPC.

3.The prosecution case is that the accused restrained the defacto complainant in a school premises and stabbed him on his chest with a knife. The petitioner was originally arrested on 02.02.2020.

4. The counsel for the petitioner submitted that, the

petitioner was arrested on 02.02.2020. Thereafter, this Court, as per order dated 07.04.2020, granted interim bail to the petitioner for 30 days. Annexure-A3 is the order. The counsel for the petitioner also submitted that after 30 days, he surrendered before the court concerned, as directed by this Court and thereafter, as per Annexure -A4 order, the learned Magistrate dismissed the Bail Application.

5.The learned Public Prosecutor submitted that, since the petitioner complied with the direction and considering the fact that, altogether he is in custody for 70 days, if this Court is granting bail, stringent conditions may be imposed.

6.After hearing both sides, I think this Bail Application can be allowed. As per Annexure-A2 order, this Court granted bail to the petitioner for 30 days in the light of special circumstances of Covid-19 and the lock

down. In Annexure – A3, it is specifically stated by this Court that, after the expiry of 30 days, the petitioner shall appear before the Jurisdictional Court and seek regular bail. As directed in Annexure – A3 order, the petitioner surrendered before the Magistrate Court and file a Bail Application. The learned Magistrate dismissed the Bail Application as per Annexure - A4 order. Considering the facts and circumstances of this case and considering the period of detention of the petitioner, I think, this Bail Application can be allowed on stringent conditions.

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 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 do 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.

8. The petitioner shall not enter the

jurisdiction limit of Perambra Police Station, till final report is submitted in Crime No.73 of 2020 of the said police station.

9. 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