

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.2916 OF 2020

(AGAINST THE CRIME NO.225/2020 OF PADINHARAHTARA POLICE STATION,
WAYANAD DISTRICT)

PETITIONERS/Accused:-

1. Nasar.M, S/o.Mammu, aged 35 years,
Mundakutty Post, Kuppadithara, Wayanad District .
2. Shameer M, S/o.Ibrahim, aged 39 years, Arambbattakunnu Post,
Kuppadithara, Wayanad District
3. Hameed K., S/o. Abdulla, aged 45 years, Mundakutty Posst, Kuppadithra,
Wayanad District
4. Nasar C, S/o.Kunhabdhulla, aged 46 years, Cholambal House, Kunnalam,
Mundakutty Post Kuppadithara, Wayanad District
5. Sirajudheen K, S/o.Irahim, aged 38 years, Kuniyan House, Mundakutty
Post Kuppadithra, Wayanad District
6. Sulaiman K.A, S/o.Abdhulla, aged 38 years, Kuriyan House, Mundakutty
Post Kuppadithara, Wayanad District
7. Aslam C., S/o.Ammed, aged 31 years, Cholamban House, Mundakutty
Post Kuppadithara, Wayanad District
8. Muhammed K.M., S/o.Moosa, aged 40 years, Kuniyan House
Mundakutty Post Kuppadithra, Wayanad District
9. Noufal M.E, S/o.Ibrahim, aged 33 years, Muthuvodan House, Mundakutty
Post Kuppadithara, Wayanad District
10. Basheer, S/o.Moidhu, aged 42 years, Kuniyan House, Mundakutty Post,
Kuppadithara, Wayanad District

BY.ADV.K.MOHANAKANNAN

RESPONDENT/State

1. State of Kerala
Represented by the Public Prosecutor,
High Court of Kerala, Kochi-31
2. Sub Inspector of Police,
Padinharahthara Police Station,
Wayanad District -673 575

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 439 of Criminal Procedure Code was heard through Video Conference.

2. The petitioners are the accused in Crime No.225 of 2020 of the Padinharathara Police Station registered alleging offences punishable under Sections 143, 147, 188, 269, 353 r/w Section 149 of the Indian Penal Code and also under Section 5 of the Kerala Epidemic Diseases Ordinance, 2020 and Section 118(3), 39, 121 of Kerala Police Act, 2011. The petitioners were arrested on 05.05.2020 and they are in custody.

3. The prosecution case is that, the petitioners formed themselves into an unlawful assembly and obstructed a Police Officer while doing his duty.

4. The learned counsel for the petitioners submitted that the incident was not happened, as alleged by the Prosecution. According to the learned counsel, even if the entire allegations

are accepted, the offence under Section 353 is not made out against the petitioners.

5. The learned Public Prosecutor submitted that since there was no serious injuries sustained, this Bail Application can be granted on stringent conditions.

6. After hearing both sides, considering the facts and circumstances of the case and considering the fact that no serious injuries were sustained by the injured and also to the fact that the petitioners are in custody from 05.05.2020, I think, this Bail Application can be allowed.

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 **Writ Petition(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

pkk