

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 06TH DAY OF MAY 2020 / 16TH VAISAKHA, 1942
B.A.TMP NO.103 OF 2020

(CRIME O.R. NO: 1 OF 2020, OF PERUVANNAMUZHI FOREST RANGE)

PETITIONERS/ACCUSED 2 AND 3:-

1. JAIMON, AGED 36 YEARS, S/O JOY, THAYYIL HOUSE, MUTHUKAD P.O,
PERUVANNAMUZHI, KOYILANDI TALUK, KOZHIKODE DISTRICT, PIN-673 528.

2. BINU, AGED 38 YEARS, S/O KUNJIKANNAN, RESIDING AT
PARAKKAMEETHAL HOUSE, MUTHUKAD P.O, PERUVANNAMUZHI, KOYILANDI
TALUK, KOZHIKODE DISTRICT, PIN-673 528

BY ADV.SRI.J.R.PREM NAVAZ

RESPONDENT/STATE:-

1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682 031.

2. FOREST RANGE OFFICER, PERUVANNAMUZHI FOREST RANGE,
KOZHIKODE DISTRICT.

BY P.P.SRI.AJITH MURALI & SANTHOSH PETER (SR)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
06.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A. TMP No. 103 of 2020

Dated this the 6th day of May, 2020

ORDER

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

2. The petitioners are accused Nos.2 & 3 in O.R. No.1/2020 of Peruvannamuzhi Forest Range, Kozhikode, registered alleging offences punishable under Sections 2(16), (20), 9, 36, 39 and 51 of the Wild Life (Protection) Act, 1972.

3. The prosecution case is that, dried flesh of Sambar Deer (Schedule III Animal) was recovered from the residence of the 1st accused. He was arrested and remanded. Based on the confession statement of the 1st accused, the petitioners are implicated in this case.

4. The learned Public Prosecutor opposed the bail application. He submitted that there is one more case against

the petitioners with similar nature. He submitted that, jurisdiction under Section 438 may not be invoked in this case.

5. The counsel for the petitioners submitted that, they are implicated based on the confession statement of the co-accused. The article is already seized.

6. It is a fact that the petitioners are implicated in this case based on the confession statement of the 1st accused. It is true that the confession statement of the 1st accused is to a forest official. But, the evidential value of such confession statement is limited. Moreover, the article involved in this case is already recovered. Therefore, no custodial interrogation of the petitioners are necessary. The contention of the learned Public Prosecutor that, there is another case registered against the petitioners cannot be considered at this stage, because that was a case registered in the year 2018.

7. After hearing both sides and considering the facts and circumstances of the case, I think, this bail application can be allowed on stringent conditions.

8. 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.

9. 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.

10. 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 proposes to arrest the petitioners, they shall be released on bail executing separate bonds 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 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.

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

MMG