

Bail Appl.TMP No.136 OF 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 28TH DAY OF APRIL, 2020 /8TH VAISAKHA, 1942

Bail Appl.TMP No.136 OF 2020

Crime No. 236/2020 of Vadakkancherry Police Station, Palakkad District

Applicants/Accused Nos. 1 to 4:

1. Anoop, aged 28 years,
S/o.Andavan, Sreekrishna Nivas,
Kaikolathara, Pulinkuttam,
Manjapra P.O, Kannambra,
Palakkad.
2. Jobi Varghese, aged 30 years,
S/o.Varghese, Kizhakkethadathil House,
Thenidukku, Vadakkancherry, Palakkad.
3. Riyas, aged 30 years,
S/o.Veeran, Thendiyampara,
Kannamkulam, Moolamkode.P.O,
Kizhakkancherry, Palakkad.
4. Shanu, aged 20 years,
S/o.Santhosh, Near Elamkavu,
Kizhakkancherry, Palakkad.

By Adv.Johnson Varikkappallil

Respondents/Complainant:

1. State of Kerala, represented by
Public Prosecutor, High Court of Kerala, Ernakulam-682031.
2. The Sub Inspector of Police,
Vadakkencherry Police Station,
Palakkad-678682.

BY PUBLIC PROSECUTOR SMT.PUSHPALATHA M.K

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
28.04.2020, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER

This is an application filed under Section 439 of the Code of Criminal Procedure.

2. The petitioners are the accused 1 to 4 in Crime No.236/2020 of the Vadakkencherry Police Station. The petitioners are alleged to have committed the offences punishable under sections 341, 324, 308, 506(ii) and 120B r/w section 34 of the IPC.

3. The prosecution case, in brief, is that: On 08/04/2020, formed an unlawful assembly armed with dangerous weapons, with a common intention to commit culpable offence of homicide, wrongfully restrained the defacto complainant and criminally intimidated him. One of the petitioners caused voluntary hurt on the defacto complainant with a wooden stick. Hence the defacto complainant sustained injuries all over his body. Thus, the petitioners have committed the above offences.

4. The petitioners were arrested on 10.04.2020. Their application for bail was dismissed by the Judicial First Class Magistrate Court-Alathur by order dated 13.04.2020 in Crl.M.P. No.2774/2020.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor via video-conferencing.

6. The learned counsel for the petitioners argued that the petitioners have been in custody since 10/04/2020 which is now 18 days. The investigation in the case is practically complete. The petitioners' continued detention in prison is unnecessary. Hence, the petitioners may be enlarged on bail.

7. The learned Public Prosecutor opposed the application. She submitted that the investigation is still in progress. The petitioners' may not be enlarged on bail at this stage.

8. The Hon'ble Supreme Court in ***Sanjay Chandra v. CBI*** [2012 (1) SCC 40] held as follows:

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution".

9. Recently, the Honourable Supreme Court in ***Nikesh Tarachand Shah v. Union of India*** [2018 (11) SCC 1] after going back to the days of the Magna Carta and after referring to *Gurbaksh Singh Sibbia v. State of Punjab* [(1980) 2 SCC 565] has reiterated the same view in ***Sanjay Chandra v. CBI (supra)***. Again, in ***P.Chidamabram v. Directorate of Enforcement*** [(2019) SCC Online SC 1549] the above proposition has been fortified.

10. After the outbreak of the Novel Corona Virus (COVID -19) pandemic in the country, the Hon'ble Supreme Court in *In Re: Contagion of COVID-19 Virus In Prisons* case (Suo Motu Writ Petition (C) No.1 of 2020) observed that the issue of overcrowding of prisons is a matter of serious concern. The State Governments were directed to take adequate measures to de-congest the prisons. Following the above direction, the

Home Department, Government of Kerala has promulgated order dated 25.03.2020, *inter alia*, directing the release of under-trial prisoners alleged to have committed offences punishable with punishment for seven years or less. Later, a Full Bench of this Court by order dated 25.03.2020 in W.P.(C) No.9400 of 2020 (Suo Motu), has issued directions to decongest the prisons in the State, keeping in mind the proposition that bail is the rule and jail is the exception.

11. Having regard to the facts and circumstances of the case, particularly the fact that the petitioners have been in custody since 10/04/2020; that the recovery has been effected; that the investigation as against the petitioners are almost complete; that the petitioners continued detention is unnecessary; the directions of the the Honourable Supreme Court in the aforecited decisions; and in view of the directions of the Hon'ble Supreme Court and a Full Bench of this Court to decongest prisons in view of Covid-19 pandemic, I am inclined to allow this bail application.

12. In the result this bail application is allowed, on the following conditions:-

(i) Due to the present National lock-down and the closure of Courts, the Jail Superintendent, where the petitioners are incarcerated, is directed to release the petitioners on them furnishing their permanent address and phone number and the addresses and phone numbers of their proposed sureties/immediate relatives. The petitioners shall also file an undertaking to the Jail Superintendent that they and their sureties will execute the bail bond before the jurisdictional Court within one week of its re-opening. The Jail Superintendent after ensuring the compliance of the above conditions, shall release the petitioners to the Station House Officer of the Police Station where the crime has been registered, who shall after noting down the above details, release the petitioners. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioners.

(ii) The petitioners shall within one week from the re-opening of the jurisdictional Court, if not already re-opened, execute a bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) each, with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioners shall appear before the Investigating Officer on all Tuesdays and Saturdays between 10.00 a.m and 11 a.m till final report is filed.

(iv) The petitioners shall not tamper with the evidence or influence the witnesses in the case, in any manner, whatsoever.

(v) The petitioners shall not commit any offence while on bail.

(vi) The petitioners shall not leave the State of Kerala without the permission of the jurisdictional court.

(vii) Needless to mention that, if the petitioners violate any of the above conditions, the Station House Officer shall be at liberty to approach the jurisdictional Court and file appropriate application seeking for cancellation of the bail.

**C.S.DIAS,
JUDGE**

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