

Bail Appl.No. 137 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.No. 137 of 2020

**(Crime No: 133/2020 of Arthunkal Police Station,
Alappuzha District)**

Petitioner/Accused No: 1 :-

**1] Banimon, aged 21,
S/o. Sebastian, Puthenpurakkal House,
Chetty P.O, Mararikulam North Panchayat,
Alappuzha-688 566.**

**By Adv. Sri. Manu Roy
Sri. Devadas H. Mallan**

Respondents/ Complainants:-

**1. State of Kerala, Represented by Public Prosecutor,
High Court of Kerala, Ernakulam, Kochi- 682 031.**

**2. The Station House Officer,
Arthunkal Police Station, Alappuzha.**

BY PUBLIC PROSECUTOR SRI.BINEESH E.C.

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 petitioner is the 1st accused in Crime No.133/2020 of the Arthunkal Police Station. The petitioner, along with the other accused are alleged to have committed the offences punishable under Sections 143, 147, 148, 341, 324, 326, 294(b) and 308 r/w section 149 of the IPC.

3. The prosecution case, in brief, is that: the accused, on 23.02.2020, obstructed the defacto complainant and abused him in vitux perative langauge. The 2nd accused hit the defacto complainant with an iron rod. Similarly, the accused Nos.3 and 5 also assaulted the defacto complainant. Thus, the accused have committed the above offences.

4. The petitioner were arrested on 24/02/2020. His application for bail was rejected by the Sessions Court, Alappuzha by order dated 23.03.2020.

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

6. The learned counsel for the petitioner argued that the petitioner has been in custody since 24.02.2020, which has now been 64 days. This Court by its order dated 12.04.2020 in BA No. 22/2020 has already grantedp bail to the 4th accused. Similarly, the other accused have also been enlarged on bail by the Court of Session, Alappuzha. The investigation in this case is complete. The petitioner's continued detention may be unnecessary and hence the petitioner may be granted bail.

7. The learned Public Prosecutor submitted that the final report has been filed on 20.03.2020, and the petitioner's continued detention may not be necessary.

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 de-congest 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, particularly the fact that that the petitioner has been in custody since, 24/02/2020, which is now 64 days; that the investigation of the case is complete; that the other accused, especially, the 4th accused has been granted bail by this Court in BA No. 32/2020 and in view of the directions of the Hon'ble Supreme Court in the aforesaid decisions and also in view of the directions of the Hon'ble Supreme Court in 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 petitioner are incarcerated, is directed to release the petitioner on them furnishing their permanent address and phone number and the addresses and phone numbers of their proposed sureties/immediate relatives. The petitioner 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 petitioner 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 petitioner. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioner.

(ii) The petitioner 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.50,000/- (Rupees fifty thousand only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioner shall appear before the Investigating Officer as and when required.

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

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

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

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

**C.S.DIAS,
JUDGE**