

Bail Appl. TMP No.142of 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.142of 2020

**(In Crime No. 724 / 2020 of Chengannur Police Station
in Alappuzha District)**

PETITIONERS /ACCUSED - A3 & A6

1. **Gokul Mohan**, aged 21 years,
S/o Mohanan,
Lekshmi Nivas,
Neduvaramocdu Muri,
Cheriyamad Village.

2. **Akhil**, aged 20 years,
S/o Navakumar,
Mudanthukarickal Kizhakkathil,
Pennukkara Muri,
Ala Village.
By Adv. Sri. K.V.Anil Kumar

RESPONDENTS /STATE & COMPLAINANT

- 1.State of Kerala represented by the Public Prosecutor,
High Court of Kerala, Ernakulam.
- 2.Station House Officer,
Chengannur Police Station, Alappuzha District.

BY PUBLIC PROSECUTOR SRI.AJITH MURALI

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

C.S.DIAS, J.

B.A. TMP No. 142 of 2020

Dated this the 28th day of April, 2020

ORDER

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

2. The learned counsel for the petitioners submitted that he is not pressing the Bail Application in respect of the 1st petitioner (3rd accused in Crime No.724/2020 of the Chengannur Police Station). Hence, the Bail Application as against the 1st petitioner is dismissed as not pressed.

3. The 2nd petitioner is the 6th accused in Crime No.724/2020 of the Chengannur Police Station. The 2nd petitioner along with the other accused are alleged to have committed the offences punishable under Sections 143, 147, 148, 326, 307 r/w Section 149 of the Indian Penal Code.

4. The prosecution case, in brief, is that: the accused in furtherance of their common intention attacked the son of the defacto complainant with deadly weapons and the victim sustained injuries including a fracture on the mandible. Hence the accused have committed the above offences.

5. The 2nd petitioner was arrested on 21.3.2020. His application for bail was dismissed by the learned Magistrate.

6. Heard the learned counsel for the 2nd petitioner and the learned Public Prosecutor via video-conferencing.

7. The learned counsel for the 2nd petitioner argued that the 2nd petitioner has been in custody since 21.3.2020. The investigation as against the 2nd petitioner is complete. His continued detention is unnecessary. Hence the 2nd petitioner may be granted bail.

8. The learned Public Prosecutor opposed the application. However, he conceded to the fact that the 2nd petitioner does not have any criminal antecedents. He further argued that the investigation in the case is in progress.

9. 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".

10. 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.Chidambaram v. Directorate of Enforcement [(2019) SCC Online SC 1549]*** the above proposition has been fortified.

11. 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.

12. Having regard to the facts and circumstances of the case, particularly the fact that that the 2nd petitioner has been in custody since 21.3.2020, which is 36 days; that the investigation as against the 2nd petitioner is practically complete; that the 2nd petitioner is not a history sheeter and that the 2nd petitioner's continued detention is unnecessary and in view of the directions of the Hon'ble Supreme Court in the aforecited decisions and in view of the directions of the Hon'ble Supreme Court and the Full Bench of this Court in view of the COVID-19 pandemic, I am inclined to allow this bail application in respect of the 2nd petitioner.

13. 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 2nd petitioner is incarcerated, is directed to release the 2nd petitioner on him furnishing his permanent address and phone number and the addresses and phone numbers of

his proposed sureties/immediate relatives. The 2nd petitioner shall also file an undertaking to the Jail Superintendent that he and his 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 2nd 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 2nd petitioner. The Investigating Officer shall keep a close vigil on the whereabouts of the 2nd petitioner.

(ii) The 2nd 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 2nd petitioner shall appear before the Investigating Officer on all Tuesdays and Saturdays between 10 a.m and 11 a.m till final report is filed.

(iv) The 2nd petitioner shall not tamper with the evidence or influence the witnesses in the case, in any manner, whatsoever.

(v) The 2nd petitioner shall not commit any offence while on bail.

(vi) The 2nd petitioner shall not leave the State of Kerala without the permission of the jurisdictional court.

(vii) Needless to mention that, if the 2nd 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 for cancellation of the bail.

C.S.DIAS
JUDGE