

Bail Appl. TMP No.154 of 2020

1

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.154 of 2020

(Against the Crime No. 268/2020 of Kunnikode Police Station, Kollam District.)

Petitioner/3rd Accused

Shijin, S/o Achankunju,  
Aged 25 years, Rose Bhavan,  
Near Marthoma Church, Thazhath,  
Chakkurarakkal Muri, Kollam, Pin-691538.

By Adv. Sri. S. Krishnakumar  
Sri. Arun George. D

\_Respondents/Complainants

1. The State of Kerala represented by the Public Prosecutor, High Court of Kerala, Ernakulam.
2. The SHO,  
Kunnikode Police Station,  
Kunnikode, Kollam District.

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:

**C.S.DIAS, J.**

-----  
**B.A. TMP No. 154 of 2020**  
-----

**Dated this the 28<sup>th</sup> day of April, 2020**

**ORDER**

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

2. The petitioner is the 3<sup>rd</sup> accused in Crime No.268/2020 of the Kunnikode Police Station. The petitioner along with the other accused are alleged to have committed the offences punishable under Sections 143, 144, 147, 148, 120(b), 341, 294(b), 323, 324, 307 & 149 of the Indian Penal Code. Section 302 was subsequently incorporated on 25.2.2020.

3. The prosecution case, in brief, is that: the accused out of their previous animosity towards the deceased Sri.Dynish, criminally restrained the deceased and the defacto complainant, and with a common intention, uttered obscene words against them and attacked them with a hard object, causing injuries on the forehead and lips of the

deceased. The 1<sup>st</sup> accused stabbed Sri.Dynish, and the accused 2 to 4 hit and kicked him. He fell down on the road and later succumbed to his injuries on 25.2.2020. Thus the accused have committed the above offences.

4. The petitioner was arrested on 26.2.2020. His application for bail was dismissed by the Judicial Magistrate of the First Class-III, Punalur, by order dated 4.3.2020 in C.M.P. No. 1293/2020.

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 is in custody since 26.2.2020. It is more than 62 days that the petitioner is in custody. This Court by its order dated 24.4.2020 in B.A. No. 1914/2020 has already granted bail to the 6<sup>th</sup> accused. The investigation in this case is practically complete. No useful purpose would be served by the petitioner's continued incarceration in jail. Hence the petitioner may be enlarged on bail.

7. The learned Public Prosecutor opposed the application. The learned Public Prosecutor however conceded to the fact that it was the 1<sup>st</sup> petitioner who inflicted the deadly injury on the deceased. The learned

Public Prosecutor also admitted that the 6<sup>th</sup> accused has been granted bail by this Court in B.A. No. 1914/2020.

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.Chidambaram 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 of the case, particularly the fact that that the petitioner is in custody since 26.2.2020, which is 62 days; that the investigation in this case is practically complete; that the 6<sup>th</sup> accused has already been granted bail by this Court in B.A. No. 1914/2020; that the petitioner's further detention is unnecessary; that directions of the Hon'ble Supreme Court in the aforecited decisions and 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.

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 is incarcerated, is directed to release the petitioner on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed sureties/immediate relatives. The 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 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.1,00,000/- (Rupees One Lakh 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 on all Tuesdays and Saturdays between 10 a.m and 11 a.m till final report is filed.

(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 for cancellation of the bail.

**C.S.DIAS**  
**JUDGE**