

**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.177 OF 2020

(O.R. NO.3/2020 OF NELLIKUTH STATION IN VAZHIKKADAVU
FOREST RANGE, MALAPPURAM DISTRICT)

Petitioners/Accused

1. Abdul Jaleel, aged 55 years, S/o Ibraheem, Mundambra House,
Chennikunnu, Karappuram P.O.,
Nilambur, Malappuram - 679331
2. Noufan Arakkal, aged 26 years, S/o Ali, Arakkal House, Nellikuth,
Nambooripotti P.O., Nilambur, Malappuram - 679333:

By Advocates M/s. Arun Chand, Thareeq Anver K., K. Salma
Jennath, Abhijith S.R., Shahnoy Shaji and Jai Govind M.J.

Respondents/Complainant:

1. State of Kerala represented by the Public Prosecutor, High Court
of Kerala, Ernakulam - 682018
2. Forest Range Officer, Nellikuth Forest Station, Vazhikkadavu
Range, Palunda, Edakkara P.O., Nilambur, Malappuram - 679331

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.177 of 2020

Dated this the 6th day of May, 2020

O R D E R

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

2. Petitioners are the accused Nos.3 and 4 in O.R.No.3/2020 of Nellikuth Station of Vazhikkadavu Forest Range. The case is registered alleging offences punishable under Sections 9, 39, 50 and 51 of the Wild Life (Protection) Act, 1972.

3. The prosecution case is that the 1st and 2nd accused was apprehended by the forest officials with an elephant tusk. The case of the prosecution that based on the statement of the 2nd accused, the involvement of the 3rd accused and 4th accused are revealed.

4. The counsel for the petitioners submitted that the only material against the petitioners is the confession statement of the co-accused. He submitted that they are ready to abide by any conditions.

5. The learned Public Prosecutor submitted that it is revealed during the investigation that the 4th accused is involved in this case and more contraband articles are to be recovered from him. But no other case is registered against the 4th accused so far.

6. After hearing both sides, I am of the opinion that this bail application can be allowed. The only material now before this Court is the confession statement of the 1st and the 2nd accused. It is true that the confession statement given by the 1st and 2nd accused to the forest officials, is admissible to some extent. But the prosecution cannot rely the confession statement of the co-accused alone. Moreover, the apprehension of the prosecutor that interrogation of the accused is necessary can be solved by directing the petitioners to appear before the officer concerned. Hence, this bail application can be allowed.

7. 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 **W.P(C)No.9400 of 2020** issued various salutary directions for minimizing the number of inmates inside prisons.

8. 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.

9. 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 propose to arrest the petitioners, they shall be released on bail executing a bond for a sum of Rs.50,000/-(Rupees Fifty Thousand only) each 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**

ab