

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 05TH DAY OF MAY 2020 / 15TH VAISAKHA, 1942

BA.NO.1802 OF 2020

(Crime No. 672/2019 of Kasaragode Police Station)

Petitioners/Accused Nos. 1 to 3:

1. Jyothish. G, aged 37 years,
S/o. Gopalakrishna, J.P. Nagara,
Anankoor, Kasaba Village,
Kasaragode -637 505.
2. Shivaprasad.K. aged 37 years,
S/o. Malinga, Thalipaduppu,
Kasaba Village, Kasaragode -671 121.
3. K.G. Kishor Kumar, aged 34 years,
S/o. K.G., Madhavan, Puthivalappu,
Gudde Temple Road, Kudlu Village,
Kasaragode -671 124

By Adv.Sri.T.G.Rajendran

Respondents/Complainant and State:

1. The Station House Officer,
Kasaragode Police Station-671121.
- 2 The State of Kerala,
Represented by the Public Prosecutor,
High Court of Kerala, Ernakulam-682031

By PUBLIC PROSECUTOR SRIAJITH MURALI & SANTHOSH PETER(SR)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
05.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A.No.1802 of 2020

Dated this the 5th day of May, 2020

O R D E R

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioners are accused Nos.1 to 3 in Crime No.672/2019 of Kasaragod Police Station registered alleging offences punishable under Sections 143, 147, 148, 341, 324, 326 and 308 read with Section 149 of the Indian Penal Code. Petitioners were arrested on 01.02.2020 and they are in custody.

3.The prosecution case is that, on 06.11.2019 at about 15 hours, near Thalippaduppu ground in Kasaragod Adukkathbayal Village, all accused in the above crime, formed themselves into an unlawful assembly and in prosecution of their common object, committed rioting armed with deadly weapons, wrongfully restrained the de facto complainant and inflicted

grievous hurt.

4. The counsel for the petitioners submitted that the petitioners are in custody for more than 90 days and they are entitled for statutory bail.

5. The learned Public Prosecutor on instructions submitted that the final report is not filed and hence the petitioners are entitled for statutory bail, but stringent conditions may be imposed.

6. Considering the facts and circumstances of the case and since the petitioners are entitled for statutory bail as per Section 167 of Cr.P.C., 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 Superintendent of Jail concerned where the petitioners are incarcerated is directed to release the petitioners on bail on executing a self bond ensuring that they will appear before the Court concerned as and when required, if they are not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioners as stipulated in Section

441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone numbers and the addresses at which the petitioners would be residing after their release.

3. The Superintendent of Jail concerned, immediately after release of the petitioners will forthwith forward the bail bond obtained from the petitioners to the jurisdictional Court.

4. The petitioners immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish their phone numbers and the places where they are going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioners and shall ensure that the petitioners do not violate the terms of the undertaking.

5. 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.

6. The petitioners shall within one week from the commencement of the functioning of the jurisdictional court, if the court is not functioning at present, execute a bond for Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

7. The petitioners shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing and other directions in the wake of declared lock-down.

8. If any of the above conditions are violated by the petitioners, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

skj