

BAIL APPL.TMP NO. 182 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.TMP NO. 182 of 2020

CRIME NO 287 OF 2020 OF ALOOR POLICE STATION,

THRISSUR DISTRICT

PETITIONER/ACCUSED 1 TO 3:

1. JOBY, AGED 44 YEARS,  
S/O ANTHONY, PYNADATH HOUSE,  
KUZHIATTUSSERY.
2. LIJU, AGED 35 YEARS,  
S/O OF CHANDRAN, PONOLY HOUSE ,  
THAZHEKKADU VILLAGE, THRISSUR DISTRICT.
3. SREEVIMAL, AGED 31YEARS,  
S/O GANDHI, THATHAMPILLY HOUSE,  
THAZHEKKADU DESOM, THRISSUR DISTRICT

BY ADV. SRI JITHIN BABU A

RESPONDENTS/COMPLAINANT:

STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, PIN- 682 031.

1. SUB INSPECTOR OF POLICE,  
ALOOR POLICE STATION, THRISSUR, PIN- 680 683.

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:

ORDER

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

2. The petitioners are accused Nos.1 to 3 in Crime No.287 of 2020 of the Aloor Police Station, Thrissur. The petitioners are alleged to have committed the offences punishable under Sections 188, 269, and 270 of Indian Penal Code and Sections 4(2) (a) and 5 of the Kerala Epidemic Diseases Ordinance 2020 and Section 55(g) of Kerala Abkari Act.

3. The prosecution case, in brief, is that: the petitioners attempted to manufacture illicit alcohol (arrack) using wash and other apparatus. On 10.4.2020, they disobeyed the lock down orders passed by the Government of India. Thus, the petitioners have committed the above offences.

4. The petitioners were arrested on 10.4.2020. Their application for bail was dismissed by the Sessions Court, Thrissur by its order dated 21.4.2020 in B.A. No.92 of 2020.

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

6. The learned counsel for the petitioners argued that the petitioners have been falsely implicated in the above case. The petitioners are absolutely innocent of the accusation levelled against them. The petitioners are in judicial custody for the last 18 days. Investigation in the case is practically completed. Petitioners' continued detention is unnecessary. Hence the petitioners may be enlarged on bail.

7. The learned Public Prosecutor opposed the bail application.

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 of the case, particularly the fact that the petitioners have been in incarceration

for the last 18 days; and that investigation in the case is practically completed; that the petitioners' continued detention in prison is unnecessary; the legal proposition laid down by the Honourable Supreme Court in the afore cited decisions and also the directions of the Hon'ble Supreme Court and also Full Bench of this Court to de-congest 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 petitioners are incarcerated, is directed to release the petitioners on they furnishing their permanent address and phone number and the addresses and phone numbers of their proposed sureties/immediate relatives. The petitioners 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 petitioners 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 petitioners. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioners.

(ii) The petitioners 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) each, with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioners shall appear before the Investigating Officer on all Tuesdays and Saturdays between 10.00 a.m. and 11 a.m. till final report is filed.

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

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

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

(vii) Needless to mention that, if the petitioners 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**

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