

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
TUESDAY, THE 5TH DAY OF MAY, 2020 / 15TH VAISAKHA, 1942

B.A. TMP No. 193 / 2020

(Against the order dated 21-04-2020 in CrIM.P.No. (Temp) 61/2020 passed by the Honourable Sessions Court, Alappuzha)

Crime No. 36/2020 of Poochackal police Station

Petitioner/Petitioner/6th Accused:-

Jithu, aged 23 years,
S/o. Girijam, Kokkatt House,
Arookutty, Alappuzha.

By Adv. NissamNazzar

Respondent/Respondent:-

1. State of Kerala,
Represented by the Public Prosecutor,
High Court of Kerala, Ernakulam, Kochi-682 031
 2. Sub Inspector of Police,
Poochackal Police Station, Alappuzha
- SRI. AJITH MURALI, PP
SRI. SANTHOSH PETER, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.TMP No.193 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. Petitioner is the 6th accused in Crime No.36 of 2020 of Poochakkal Police Station registered alleging offences punishable under Sections 143, 147, 148, 341, 324, 326, 307 and 120B read with Section 149 of the Indian Penal Code. Petitioner was arrested on 25.02.2020 and he is in custody.

3.The prosecution case is that the accused hatched conspiracy to do away the husband of the de facto complainant and his friend Thanseer and later, formed into unlawful assembly, armed with deadly weapons, with the knowledge that they all are members of the said unlawful assembly. It was further alleged that, in furtherance of their common object, on 21.01.2020, at about 4.15 hours, they wrongfully restrained

Mr.Renish, husband of the de facto complainant and his friend Mr.Thanseer on the road on the southern side of the house of Renish and attacked him with knife, sword, stick and iron rod and hence the petitioner committed offence. The petitioner is in custody from 25.02.2020.

4. The counsel for the petitioner submitted that the other accused are released on bail and the petitioner was not released on bail because he was involved in some other case. Now, there was change of circumstances and he is in custody from 25.02.2020 onwards.

5.The learned Public Prosecutor submitted that if this court granting bail to the petitioner, stringent conditions may be imposed.

6.After hearing both sides and considering the fact that other accused in the case have already granted bail and also he is in custody from 25.02.2020 onwards, I think the petitioner can also be released on bail.

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 petitioner is incarcerated is directed to release the petitioner on bail on executing a

self bond ensuring that he will appear before the Court concerned as and when required, if he is not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioner as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone number and the address at which the petitioner would be residing after his release.

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

4. The petitioner immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish his phone number and the place where he is going to

reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioner and shall ensure that the petitioner does not violate the terms of the undertaking.

5. The petitioner shall appear before the Investigating Officer as and when required. The petitioner shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

6. The petitioner 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) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

7. The petitioner 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 petitioner, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

YKB