

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 TMP.NO.209 OF 2020

(CRIME NO.268 OF 2020 OF KUNNICODE POLICE STATION, KOLLAM DISTRICT)

Petitioner/2nd Accused

1. Mr.Robbin Alexander alias Joji,S/o.Alexander, aged 35 years,ThakkodMenethilVeedu,Chakkuvarakkal Muri, Chakkuvarakkal Village, Kollam,PIN-691508

By Advocate Sri. R.V.Sreejith

Respondents/complainants:

1. State of Kerala, Represented by the Public Prosecutor, High Court of Kerala, Ernakulam, Kochi-682031

2. The Sub Inspector of Police,Kunnicode Police Station.

BY P.P.SRI.AJITH 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.TMP No.209 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 2nd accused in Crime No.268 of 2020 of Kunnikode Police Station registered alleging offences punishable under Sections 143, 144, 147, 148, 120(b), 341, 294(b), 323, 324, 307, 302 read with Section 149 of the Indian Penal Code. Petitioner was arrested on 23.2.2020 and he is in custody.

3.The prosecution case is that due to previous animosity towards the deceased, the petitioner who is the 2nd accused along with the other accused criminally

restrained the defacto complainant and the deceased, uttered obscene words and the 1st accused stabbed the deceased using a dragger. The overtact alleged against the petitioner is that, he assaulted the deceased using his hands and legs.

4. The counsel for the petitioner submitted that the main allegation and overtacts are against the 1st accused and allegation against the petitioner is less compared to the other accused. He also contended that the petitioner is in custody from 23.2.2020 onwards.

5.The learned Public Prosecutor opposed the bail application saying that the petitioner committed serious offence and he may not be released on bail at this stage. But it is conceded that, three of the accused were already released on bail.

6.Heard the counsel for the petitioner and the Public Prosecutor.

7.It is a fact that the petitioner is in custody for the last 72 days. It is also a fact that three of the accused are already on bail. It is also a fact that the serious overtacts are attributed to the 1st accused who is still in custody. The allegation against the petitioner is that, he used his hands and legs while attacking the deceased. Moreover, the investigation also progressed well. Considering the facts and circumstances of this case, I think, the bail application can be allowed with stringent conditions.

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

ska