

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. 271 / 2020

(Crime No.42 OF 2020 OF PERUMPADAPPU POLICE STATION, MALAPPURAM DISTRICT.)

PETITIONER/ACCUSED NOS.1 AND 8

1. RAFI A.H. @ UMAN RAFI, 35 YEARS, HUSSAINAR, ALUNGAL HOUSE, PALAPPETTY P.O., PALAPPETTY BEACH, PONNAI TALUK, MALAPPURAM.
2. MUNAS, 31 YEARS, S/O. KUNJIMOHAMED, THOPPIL HOUSE, PALAPPETTY PO, PALAPPETTY BEACH, PONNAI TALUK, MALAPPURAM.

ADV. M. ANIL KUMAR AND PREETHI K. PURUSHOTHAMAN

Vs

RESPONDENTS / COMPLAINANTS:

1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA AT ERNAKULAM.
2. THE SUB INSPECTOR OF POLICE, PERUMPADAPPU POLICE STATION, MALAPPURAM DISTRICT REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

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.271 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 the accused in Crime No.42 of 2020 of Perumbadappu Police Station, registered alleging offences punishable under Section 143, 147,148, 341, 323, 324, 326, 307, 109, 118(a), 120(B) & 212 r/w 149 of IPC. Petitioners were arrested on 29.02.2020 and they are in custody.

3. The prosecution case is that on 14.02.2020 at about 17.14 hrs all accused herein along with others formed themselves into an unlawful assembly then committed rioting with deadly weapons, and caused cut injury with sword as against defacto complaint and his friend and also beat them with pipe range which resulted grievous injury.

4. The counsel for the petitioners submitted that they were in custody from 29.02.2020. He also submitted that

some of the accused had released on bail and the petitioners are the accused nos. 1 and 8.

5. The learned Public Prosecutor opposed the bail application, but concedes that some of the accused had already released on bail.

6. It is true that the offence alleged is serious and the injured sustained grievous hurt. But the petitioners are in custody from 29.02.2020. Moreover, some of the other accused are already released on bail.

7. After hearing both sides, I think this bail application can be allowed on stringent conditions.

8. 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.

9. 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.

10. 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 number and the address 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 number and the place 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 does 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)

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 lockdown.

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