

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. 324 / 2020

In Crime No: 399/2019 of Pattambi Police Station, Palakkad District]

**Petitioner/ [Accused No 1, 3, 4 & 5]:**

1. Yoosaf, S/o. Saidalavi, aged 48 years,  
Varamangalathu House,  
Pattambi Post, Kondurkara, Palakkad District – 679 313.
2. Haris S/o. Yusuf, aged 22 years,  
Varamangalathu House,  
Pattambi Post, Kondurkara, Palakkad District – 679 313.
3. Asif S/o. Yusuf, aged 26 years,  
Varamangalathu House,  
Pattambi Post, Kondurkara, Palakkad District – 679 313.
4. Sakkeer S/o. Aboobaker, aged 38  
Muthaniyil House, Parappuram, Kareekad, Ongallur, Pattambi, Palakkad

**Adv Jai George & Adv. Daisy A. Philipose**

**Respondent/ Complainant:**

- 1 State of Kerala represented by the Public Prosecutor,  
High Court of Kerala, Ernakulam 682 031.
2. Sub Inspector of Police, Pattambi Police Station,  
Pattambi, Palakkad District- 679 303

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**

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B.A.TMP No.324 of 2020  
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Dated this the 5<sup>th</sup> 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.399 of 2019 of Pattambi Police Station registered alleging offences punishable under Sections 143, 147, 148, 324, 326, 506, 308 read with Section 149 of the Indian Penal Code. Petitioners were arrested on 27.4.2020 and they are in custody.

3.The prosecution case is that on 28.11.2019 at 11.30pm due to previous enmity towards one Musthafa, who is the son of the defacto complainant, the accused formed themselves into an unlawful assembly at

Karekkad, fully knowing that they are members of that assembly, possessing dangerous weapons like Iron rods and assaulted Musthafa. When defacto complainant and his another son named Hamsa tried to prevent the attack, 1<sup>st</sup> accused hit on the head of defacto complainant with an iron rod. It is also alleged that the attack of the 1<sup>st</sup> accused by iron rode was likely to cause his death, if he did not ward off the same. It is further alleged that 2<sup>nd</sup> accused hit on the head of Hamsa with an iron rode and thereby caused fracture on his skull.

4. The counsel for the petitioners submitted that the petitioners are in custody from 27.4.2020 onwards. They are ready to abide any conditions of this court for releasing bail. Counsel also contended that, the arrest in this case is in violation of the full bench decision.

5. The learned Public Prosecutor submitted that if this court is granting bail to the petitioners, stringent

conditions may be imposed.

6. After hearing both sides, and considering the facts and circumstances of the case especially the detention period of the petitioners, this bail application can be allowed. It is to be noted that a full Bench of this court recorded the submission of the Additional Advocate General that, there will not be any arrest during the pandemic period and the arrest will be only in inevitable cases. I do not want to make any observation on this aspect. I make it clear that, all officers are bound by the directions of this court. Anyway I am inclined to grant bail in this case.

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 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 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**