

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. 339 / 2020

(In Crime O.R. No: 11 of 2020 of Punnala Forest Station, Pathanapuram Forest Range, Kollam District registered for the offences punishable under Section 27(i) (e) (iii) and (iv) and 52 of Kerala Forest Act)

Petitioners/Accused persons 1 and 2:-

- 1 Haneefa, aged 58 years, S/o Shamsudeen Rawuther, residing at Thengumthara Purayidam Veedu, Kundamkulam, Punnala Village, Pathanapuram Taluk, Kollam District, Pin-689 676.
- 2 Amjith Khan, aged 21 years, S/o Haneefa residing at Thengumthara Purayidam Veedu, Kundamkulam, Punnala Village, Pathanapuram Taluk, Kollam District, Pin-689 676.

By Adv. Sri. J. R. Prem Navaz

Respondent/State & I.O:-

- 1 State of Kerala, Represented by the Public Prosecutor, High Court of Kerala, Ernakulum, 682 031.
- 2 The Forest range officer, Punnala Forest Station, Pathanapuram Forest Range, Kollam District.

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. 339 of 2020**  
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**Dated this the 5<sup>th</sup> day of May, 2020**

**ORDER**

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. The petitioners are the 1<sup>st</sup> & 2<sup>nd</sup> accused in Crime O.R.No.11/2020 of Punnala Forest Station, Pathanapuram Forest Range, registered alleging offences punishable under Sections 27 (i)(e)(iii) & (iv) and 52 of the Kerala Forest Act.

3. The prosecution case is that, the accused persons unlawfully entered into the 2015 Accasia Plantation and 2014 Manjiyam Plantation of Kadakkamon Reserve and cut down two teak trees and removed it from there and thereby committed the aforesaid offences. The petitioners were arrested on

26.4.2020 and they are in custody.

4. The counsel for the petitioners submitted that, the maximum punishment that can be imposed for the offences alleged against the petitioners are below 7 years. The petitioners are in custody from 26.4.2020 onwards.

5. The learned Public Prosecutor opposed the bail application. He submitted that, if this Court grant bail, stringent conditions may be imposed.

6. After hearing both sides, according to me, this bail application can be allowed, especially because the punishment that can be imposed for the offences alleged against the petitioners are below 7 years. Moreover, the petitioners are in custody from 26.4.2020 onwards. Hence, this bail application is allowed and the petitioners can 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 **Writ Petition(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 separate self bonds 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 numbers and the addresses 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 bonds 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 numbers 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 do 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 separate bonds

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**