

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.5 / 2020

[IN CRIME NO. 3937/2020 OF KOTTARAKKARA POLICE STATION]

PETITIONERS/ 1ST AND 2ND ACCUSED:

1 SETHU AGED 23 YEARS ,
S/OSADANADAN , SETHU BHAVAN ,
CHIRATTAKONAM , THALACHIRA,
VETTIKKAVALA VILLAGE KOLLAM,
691538.

2 NITHEESH , AGE 21 YEARS ,
S/O.SATHYAN ACHARI , SUDHEESH
BHAVAN, SASTHAVATTOM, MURUKKUMPUZH
, ATTINGAL, THIRVANTHAPURAM-
695302.

SRI
SARINPANICKER

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682031.

2 THE SUB INSPECTOR OF POLICE KOTTARAKKARA
POLICE STATION , REPRESENTED BY THE PUBLIC
PROSECUTOR-682031.

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. 5 of 2020

Dated this the 5th 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 1st & 2nd accused in Crime No.3937/2019 of Kottarakkara Police Station, registered alleging offences punishable under Sections 294(b), 341, 323, 324, 506(ii), 307 r/w 34 of the IPC and Section 27 of the Arms Act. The 1st accused was arrested on 14.3.2020 and the 2nd accused was arrested on 16.3.2020.

3. The prosecution case is that, 1st accused married the daughter of the uncle of the defacto complainant and 1st accused quarreled with his wife and

took her to the house of the uncle of the defacto complainant and the same was questioned by the defacto complainant. On 16.12.2019 at 11 pm, 1st accused came near the house of the defacto complainant in a Maruthi Car and the defacto complainant tried to enquire about the matter, 1st accused attempted to assault him with a weapon like hockey stick. Seeing this, the people of the locality came there and 1st accused escaped leaving his car. Owing to that enmity, 1st accused along with 5 accused coming in scooters and motor cycles near to the house of the defacto complainant for taking the car and the same was prevented by the defacto complainant and some other persons. A1 beaten the neck of one Vishnu with his hand and A4 inflicted cut injuries on the left chest of Vishnu with a sword resulting grievous injury. The other accused also participated in the offence.

4. The counsel for the petitioners submitted that,

the petitioners are in custody from the middle of March, 2020 onwards. They are ready to abide by any conditions.

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

6. After hearing both sides, and after considering the duration of detention of the petitioners, and considering the facts and circumstances of this case, I think, bail can be granted to the petitioners. Hence, this bail applications is allowed.

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