

B.A TMP NO.52 OF 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 29TH DAY OF APRIL, 2020/9TH VAISAKHA, 1942

B.A TMP NO.52 OF 2020

(Crime No. 880/20 of Kaipamangalam Police Station, Thrissur District)

Name and Address of the Petitioner/Accused Nos. 1 & 2:

1. Vishnu, S/o. Suresh, Chirattappurackal House, Vazhiambalam Desom, Kaipamangalam PO, Thrissur.
2. Jishnu, S/o. Suresh, Chirattappurackal House, Vazhiambalam Desom, Kaipamangalam PO, Thrissur.

By Adv. Vishnuprasad Nair

Name and Address of the Respondents/State:

1. State of Kerala represented by the Public Prosecutor, High Court of Kerala, Ernakulam – 682031.
2. Sub Inspector of Police, Kaipamangalam Police Station, Thrissur District – 680681.

BY PUBLIC PROSECUTOR SRI.AJITH MURALI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29.04.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

This is an application filed under Section 439 of the Code of Criminal Procedure.

2. The petitioners are accused 1 and 2 in Crime No.880/2020 of the Kaipamangalam Police Station. The petitioners are alleged to have committed the offences punishable under Sections 341, 323, 324, 294(b), 506, 326, 308 r/w Section 34 of the Indian Penal Code.

3. The prosecution case, in brief, is that: the petitioners and the defacto complainant are neighbours. On 18.12.2019, the petitioners attacked the defacto complainant with an iron rod and they attempted to hit him on his head. However, the defacto complainant sustained a fracture on his nasal bone and other injuries. Thus, the petitioners have committed the above offences.

4. The petitioners were arrested on 14.03.2020. Their application for bail was dismissed by the Judicial First Class

Magistrate, Kodungalloor by order dated 19.03.2020 in Crl.M.P.No.1202 of 2020.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor via video-conferencing.

6. The learned counsel for the petitioner argued that the petitioners and the defacto complainant are neighbours. The allegations levelled against the petitioners are false. There is a boundary dispute between the petitioners and the defacto complainant, and it is out of the said animosity that the present crime has been registered. The petitioners were arrested on 14.03.2020. The petitioners are in incarceration for the last 45 days. This Court dismissed the application for anticipatory bail on the ground that the recovery has not been effected. Now, the recovery has been effected, and the final report has been filed. Hence, the petitioners may be enlarged on bail.

7. The learned Public Prosecutor submitted that the investigation is complete and the final report has been filed.

Hence, even if the petitioners are enlarged on bail, stringent conditions may be imposed.

8. The Hon'ble Supreme Court in ***Sanjay Chandra v. CBI*** [2012 (1) SCC 40] held as follows:

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution".

9. Recently, the Honourable Supreme Court in ***Nikesh Tarachand Shah v. Union of India*** [2018 (11) SCC 1] after going back to the days of the Magna Carta and after referring to *Gurbaksh Singh Sibbia v. State of Punjab* [(1980) 2 SCC 565] has reiterated the same view in ***Sanjay Chandra v. CBI (supra)***. Again, in ***P.Chidamabram v. Directorate of Enforcement*** [(2019) SCC Online SC 1549] the above proposition has been fortified.

10. After the outbreak of the Novel Corona Virus (COVID -19) pandemic in the country, the Hon'ble Supreme Court in In

Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition (C) No.1 of 2020) observed that the issue of overcrowding of prisons is a matter of serious concern. The State Governments were directed to take adequate measures to de-congest the prisons. Following the above direction, the Home Department, Government of Kerala has promulgated order dated 25.03.2020, *inter alia*, directing the release of under-trial prisoners alleged to have committed offences punishable with punishment for seven years or less. Later, a Full Bench of this Court by order dated 25.03.2020 in W.P.(C) No.9400 of 2020 (Suo Motu), has issued directions to de-congest the prisons in the State, keeping in mind the proposition that bail is the rule and jail is the exception.

11. On a cumulative appreciation of the facts and circumstances of the case and after hearing the counsel for the petitioner and the learned Public Prosecutor and considering the fact that the investigation in the case is almost complete; that the final report has been filed; that the recovery has been effected; the legal proposition laid down by the Honourable

Supreme Court in the afore cited decisions; and the directions of the Hon'ble Supreme Court and a Full Bench of this Court to decongest prisons in view of Covid-19 pandemic, I am inclined to allow this bail application.

12. In the result this bail application is allowed, on the following conditions:-

(i) Due to the present National lock-down and the closure of Courts, the Jail Superintendent, where the petitioner is incarcerated, is directed to release the petitioner on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed sureties/immediate relatives. The petitioner shall also file an undertaking to the Jail Superintendent that he and his sureties will execute the bail bond before the jurisdictional Court within one week of its re-opening. The Jail Superintendent after ensuring the compliance of the above conditions, shall release the petitioner to the Station House Officer of the Police Station where the

crime has been registered, who shall after noting down the above details, release the petitioner. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioner.

(ii) The petitioner shall within one week from the re-opening of the jurisdictional Court, if not already re-opened, execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) each, with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioner shall appear before the Investigating Officer as and when required by him .

(iv) The petitioner shall not tamper with the evidence or influence the witnesses in the case, in any manner, whatsoever.

(v) The petitioner shall not commit any offence while on bail.

(vi) The petitioner shall not leave the State of Kerala without the permission of the jurisdictional court.

(vii) Needless to mention that, if the petitioner violates any of the above conditions, the Station House Officer shall be at liberty to approach the jurisdictional Court and file appropriate application seeking for cancellation of the bail.

C.S.DIAS, JUDGE