

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 06TH DAY OF MAY 2020 / 16TH VAISAKHA, 1942

B.A.TMP NO.53 OF 2020

(Crime No.92 of 2020 of Aroor Police Station, Alapuzha District)

Petitioners/ 3rd and 4th Accused:

1. Shahul M.S,
S/o Shajahan, Nadangattu House,
Eramalloor P.O, Cherthala,
Alapuzha – 688 537.

2. Shifas Shaheer,
S/o Shaheer, Edapatambu,
Eramalloor P.O, Cherthala,
Alapuzha – 688 537.

By Adv. Sri V.A.VINOD

Respondents/ State & Complainant:

1. State of Kerala, rep; by Public Prosecutor,
High Court of Kerala, Ernakulam - 682 031.

2. The Sub Inspector of Police,
Aroor Police Station, Alapuzha – 688 535.

BY PUBLIC PROSECUTOR SRI.AJITH MURALI & SRI.SANTHOSH PETER(SR)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
06.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A.TMP.No.53 of 2020

Dated this the 6th day of May, 2020

O R D E R

This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. Petitioners are accused Nos.3 and 4 in Crime No.92 of 2020 of Aroor Police Station. The above case is registered against the petitioners/accused Nos.3 and 4 and others alleging offences punishable under Sections 341, 326, 506(ii) and 307 read with Section 34 of the Indian Penal Code.

3. The prosecution case is that, the 2nd accused kicked the complainant and when he fell down on the ground the petitioners caught hold of him and the 1st accused tried to inflict injury on the neck of the victim using a sword, which was blocked by the de facto complainant with his hand, which resulted injury on his left hand.

4. The counsel for the petitioners submitted that there is no serious overt act attributed against the petitioners who are

the 3rd and 4th accused in the case. It is also submitted that the 1st and the 2nd accused were already arrested and they are on bail. It is also submitted that, it is a case in which both sides sustained injuries.

5. The learned Public Prosecutor opposed the Bail Application. The learned Public Prosecutor submitted that, if this Court is granting bail, stringent conditions may be imposed.

6. After hearing both sides, according to me, the petitioners are entitled for bail under Section 438 of Cr.P.C. The main accused were already arrested and released on bail. The main overt acts are attributed against the 1st and 2nd accused. The allegation against these petitioners is only to the effect that they wrongfully restrained the injured. It is also stated that the 1st accused was arrested when he was undergoing treatment in a hospital for the injuries sustained by him in this incident. In this case, I think, no custodial interrogation is necessary.

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 petitioners/accused Nos.3 and 4 shall appear before the Investigating Officer within ten days from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose to arrest the petitioners/accused Nos.3 and 4, they shall be released on bail on executing a bond for a sum of Rs.50,000/-(Rupees Fifty Thousand only) each with two solvent sureties each for the like sum to the satisfaction of the officer concerned.

3. The petitioners/accused Nos.3 and 4 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.

4. The petitioners/accused Nos.3 and 4 shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social

distancing in the wake of declared lock-down.

5. If any of the above conditions are violated by the petitioners/accused Nos.3 and 4, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

skj