

BA TMP.NO.55/2020

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.55 of 2020

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

Petitioner/Accused 1

Nishaf N.S aged 28 years, S/o. Shereef, Nishaf Manzil, Eramalloor P.O.,
Alappuzha District.

By Adv. Sri Joseph Rony Jose

Respondent/ State:-

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

BY PUBLIC PROSECUTOR SMT.PUSHPALATHA M.K

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 petitioner is the 2nd accused in Crime No. 92/2020 of the Aroor Police Station, Alapuzha District. The petitioner along with other accused are alleged to have committed the offences punishable under Sections 341, 326, 307, 506(ii) read with Section 34 of Indian Penal Code.

3. The prosecution case, in brief, is that; the petitioner along with other accused, out of their previous enmity, attacked the de-facto complainant on 25.01.2020. The 1st accused inflicted injury on de-facto complainant. The other accused abetted the 1st accused to commit the offence. Thus the above accused have committed the above offenses.

4. The petitioner was arrested on 02.04.2020. The

application for bail was dismissed by the learned Magistrate.

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 petitioner is in custody since 02.04.2020, which is 28 days. The investigation in the case is complete, as against the petitioner. The 1st accused has already been granted bail. The petitioner's further incarceration is unnecessary. Hence the petitioner may be granted bail.

7. The learned Public Prosecutor, on instructions, submitted that the first accused was arrested on 26.01.2020, it was only after the investigation as against the first accused was completed, he was enlarged on bail. The allegation against the petitioner is that he shouted to the 1st accused to murder the complainant. Even if the petitioner enlarged on bail, stringent conditions may be imposed on him.

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. Having regard to the facts and circumstances of the case, particularly the fact that that the petitioner has been in custody since 02.04.2020, which is 28 days; that the first accused had already been granted bail; that the investigation in the case is practically complete; that the petitioner's continued detention is unnecessary;

the legal proposition laid down by the Honourable Supreme Court in the afore quoted decisions; and the directions of the Honourable 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 fifteen thousand only) 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 on all Tuesdays and Saturdays between 10.00 a.m and 11 a.m till final report is filed.

(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

SM