

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.S. DIAS

FRIDAY, THE 24TH DAY OF APRIL 2020/4TH VAISAKHA , 1942

B.A. No.75 OF 2020

(CRIME NO.89/2020 OF KATTAKKADA POLICE STATION, PENDING BEFORE THE  
JUDICIAL FIRST CLASS MAGISTRATE COURT, KATTAKADA

PETITIONERS/ACCUSED 2,4 AND 6:

1. LINU MAHESH, S/O.MAHESWARAN, AGED 30 YEARS,  
KUZHUVILA VEEDU, KOLLAMKONANAM, PARACHAL MURI,  
KULATHUMMAL VILLAGE, KATTAKADA TALUK.
2. UTHAMAN @ MANIKANDAN, S/O.RAVEENDRAN NAIR,  
AGED 34 YEARS, PADMINI NIVAS, CHETTADIKONAM,  
KEEZHMACHEL, PARACHAL MURI, KULATHUMMAL VILLAGE,  
KATTAKADA TALUK.
3. MITHUN @ MOODAN, S/O.MANIKANDAN, AGED 25 YEARS,  
ROADARIKATHU VEEDU, KOOVALASSERY, SASTHAMKONAM,  
ARUVIKKARA, MARANALLOOR VILLAGE, KATTAKADA TALUK.

By Adv.Sri. G.Sudheer

**Respondents/ & Complainant:**

1. State of Kerala, Rep. by the Public Prosecutor,  
High Court of Kerala, Ernakulam.
2. Sub Inspector of Police, Kattakada Police Station,  
Thiruvananthapuram District.

By Public Prosecutor

THIS B.A. HAVING BEEN FINALLY HEARD ON 24.04.2020, 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 the accused nos. 2, 4 and 6 in Crime No.89/2020 of the Kattakkada Police Station, Thiruvananthapuram. The petitioners, along with the other accused are alleged to have committed the offences punishable under Sections 143, 147, 148, 447, 379, 302, 212 and section 201, read with section 149 of the Indian Penal Code.

3. The prosecution case, in brief, is that: the accused in the above crime had committed theft from the property of one Sri.Sangeeth. The accused formed an unlawful assembly in furtherance of their common intention and trespassed into the property of Sri.Sangeeth in 2 vehicles. Sri. Sangeeth attempted to stop the accused from committing theft in his property. In the altercation that occurred, Sri. Sangeeth lost his life. Thus, the petitioner and the other accused have committed the above offences.

4. The petitioners were arrested on 24/01/2020. Their

application for bail was dismissed by the Sessions Court on 04/04/2020 in CrI. MC No. 14, 15 and 16 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 accused 3 and 5 were granted bail by this Court by its orders in BA Nos. 2047/2020 and 2253/2020. The investigation in this case is almost complete as against the petitioners. No useful purpose would be served in the continuous incarceration of the petitioner. Hence the petitioners may be granted bail.

7. The learned Public Prosecutor submitted that the investigation is complete. He affirmed the fact that petitioners 3 and 5 have already been granted bail by this Court. However he submitted that the petitioners may be enlarged on bail on stringent conditions.

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, particularly the fact that that the petitioners have been in custody since, 27/01/2020; that the investigation of the case is completed; that the accused 3 and 5 have already been granted bail by this Court in BA Nos. 2047/2020 and 2253/2020; that there are no circumstances to reject the claim of the petitioners for bail; and in view of the directions of the Hon'ble Supreme Court in the aforecited decisions and also in view of the directions of the Hon'ble Supreme Court in 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 petitioners are incarcerated, is directed to release the petitioners on them furnishing their permanent address and phone number and the addresses and phone numbers of their proposed

sureties/immediate relatives. The petitioners shall also file an undertaking to the Jail Superintendent that they and their 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 petitioners 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 petitioners. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioners.

(ii) The petitioners 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) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioners shall appear before the Investigating Officer on all Saturdays between 10.00 a.m and 11 a.m till final report is filed.

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

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

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

(vii) Needless to mention that, if the petitioners 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**

Nsd