

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 05TH DAY OF MAY 2020 / 15TH VAISAKHA, 1942

BA TMP.NO.81 OF 2020

(CRIME NO.172/2020 of PAZHAYANNUR POLICE STATION,
THRISSUR DISTRICT)

Petitioner / AccusedNo.3:-

Faisal
Aged 38 years ,
S/o Unniyankutty ,
Magottupeedikayil House ,
Chelakkodu Kara,
Chelakkara , Thrissur
Pin:680586.

By Adv. Sri Renjith B.Marar

Respondents / State:

1. State of Kerala, represented by Public Prosecutor,
High Court of Kerala, Ernakulam
PIN- 682031.
2. The Sub Inspector of Police,
Pazhayannur Police Station, Thrissur.

BY P.P. SRI.AJITH MURALI & SANTHOSH PETER(SR)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
05.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.TMP. No.81 of 2020

Dated this the 5th day of May, 2020

O R D E R

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the 3rd accused in Crime No.172 of 2020 of the Pazhayannur Police Station registered alleging offences punishable under Sections 188, 269, 416, 384 r/w 34 of the Indian Penal Code, Section 188(e) of the Kerala Police Act and Section 5 r/w Section 6 of the Kerala Epidemic Ordinance, 2020. Petitioner was arrested on 7.4.2020 and he is in custody.

3.The prosecution case is that the 1st and the 2nd accused, who are husband and wife claiming to be human rights activists, extorted Rice, Sugar and Maida from a supermarket on 2.4.2020. The allegation against the petitioner is that the petitioner was driving the vehicle when the accused No.1 and 2 went in to the supermarket of the complainant. The admitted case of the prosecution is that the 1st and 2nd accused

threatened that if the materials are not supplied, they will shut down the shop.

4. The counsel for the petitioner submitted that the only non bailable offence is under Section 384 of IPC. According to him, no prima facie case is made out against him under Section 384 IPC.

5. The learned Public Prosecutor opposed the bail application saying that the allegations are serious.

6. After considering the facts and circumstances in this case, according to me, this bail application can be allowed. The petitioner is the 3rd accused and he is in custody from 7.4.2020 onwards. The only non bailable offence is under Section 384 IPC. To attract the definition of extortion, the accused must intentionally put in fear of any injury to a person. Even as per the prosecution, the allegation is that if the materials are not supplied, they will shut down the shop. Therefore, it may amount to simple theft. Moreover, the accused is in custody from 7.4.2020. Therefore, this bail application to be 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 **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 Superintendent of Jail concerned where the petitioner is incarcerated is directed to release the petitioner on bail on executing a self bond ensuring that he will appear before the Court concerned as and when required, if he is not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioner as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone number and the address at which the petitioner would be residing after his release.

3. The Superintendent of Jail concerned, immediately after release of the petitioner will forthwith forward the bail bond obtained from the petitioner to the jurisdictional Court.

4. The petitioner immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish his phone number and the place where they are going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioner and shall ensure that the petitioner do not violate the terms of the undertaking.

5. The petitioner shall appear before the Investigating Officer as and when required. The petitioner shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

6. The petitioner shall within one week from the

commencement of the functioning of the jurisdictional court, if the court is not functioning at present, execute a bond 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 petitioner 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 petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

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