

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.82 of 2020

CRIME NO.153/2020 VADAKKANCHERRY POLICE STATION, PALAKKAD DISTRICT.

APPLICANTS/ACCUSED NOS.1 & 2:

1. SANJU, AGED 27 YEARS,
S/O.LATE KRISHNAN, PARAKKUNDU HOUSE,
KARAYAMKADU, VADAKKANCHERRY, PALAKKAD.

2. ARUN, AGED 28 YEARS,
S/O.ANDAVAN, SREEKRISHNA NIVAS,
KAMMANTHARA, VADAKKANCHERRY PALAKKAD.
BY ADV. JOHNSON VARIKKAPPALLIL

RESPONDENT/COMPLAINANT:

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM – 682 031.

2. THE SUB INSPECTOR OF POLICE,
VADAKKENCHERRY POLICE STATION,
PALAKKAD – 678682.
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. 1 and 2 of Crime No. 153/2020 of the Vadakkancherry Police Station. The petitioners are alleged to have committed the offences punishable under Sections 341, 323, 506(ii) and 392 r/w section 34 of the Indian Penal Code.

3. The prosecution case, in brief, is that: on 15/03/2020, the accused 1 and 2 in furtherance of their common intention wrongfully restrained the defacto complainant and stole Rs.60,000/- from him and thereafter caused hurt to him. Thereafter, they robbed the motor cycle belonging to the defacto complainant. Thus the petitioners have committed the above offences.

4. The petitioners were arrested on 16/03/2020. Their application for bail was dismissed by the JFCM-I, Alathur, by order dated 19.03.2020 in CrI.MP NO. 2708/2020.

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 Police have deliberately included the offence under section 392 to make it a non-bailable case. In fact, the defacto complainant owed money to the accused. On demanding the said amount, there was an altercation between them. The petitioners are innocent of the accusations levelled against them. It is more than 39 days since the petitioners are in custody. Hence their continued detention may not be necessary. Hence they may be released on bail.

7. The learned Public Prosecutor opposed the application. He argued that the petitioners have antecedents. There is a case registered against the 1st petitioner as early as in 2016 for an offence committed under section 307 IPC. As regards the 2nd petitioner, there is a case registered against him in the year 2015 for an offence punishable under section 354 IPC. However the learned Public Prosecutor conceded that the investigation

as against the petitioners is almost complete, and no further recovery has to be effected.

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 incarceration for the last 39 days; that the investigation in the case is almost complete; that no further recovery has

to be effected; that the petitioners' continuous detention may not be necessary; 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 the 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 his proposed sureties/immediate relatives. The petitioners shall also file an undertaking to the Jail Superintendent that them 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

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