

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.83 of 2020**

[CRIME NO.199 OF 2020 OF PALLICKATHODU POLICE STATION, KOTTAYAM DISTRICT]

**Petitioner/Accused No.9**

Thomas.T.M, aged 76 years, S/o.Mathew ,Thundiyl House, Kizhakkadambu Bhagom, Malalumkal.P.O,Akalakunnam Village, Kottayam District.

By Adv.Sri.P.M.Joshi

**Respondents/Complainant**

1. State of Kerala Represented by public prosecutor High Court of Kerala,Ernakulam,Kochi-682 031.
2. The Inspector of Police, Pallickathodu Police Station, Pallickathode,Kottayam 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 petitioner is the 9<sup>th</sup> accused in Crime No.199/2020 of the Pallickathode Police Station. The petitioner, along with the other accused, are alleged to have committed the offences punishable under Sections 25 r/w sections 5 and 6 of the Arms Act and Section 5 of the Explosive Substance Act and Section 120B of the Indian Penal Code.

3. The prosecution case, in brief, is that: the petitioner along with the other accused have indulged in the illegal manufacturing and sale of country guns without any license or permit. The accused 1 and 2 were found in possession of materials for manufacturing of guns, including its working parts and barrel. The accused no. 4 allegedly aided the sale of gun. The specific allegation against the petitioner, the 9<sup>th</sup> accused, is that he was the one who supplied gun powder and carbon powder to the 2<sup>nd</sup> accused, to facilitate the illegal manufacture of guns.

Thus, the petitioner alongwith the other accused have committed the above offences.

4. The petitioner was arrested on 14/03/2020. His application for bail was dismissed by the Sessions Court, Kottayam by its order dated 03/04/2020 in Crl. MP No. 637/22.

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 has been implicated in the crime only on the basis of the confession statement, which is discernible in the remand report. According to him the accused 6, 7 and 9, who are in possession of the illegally manufactured guns, were granted bail by the Sessions Court in Crl.MP No. 637/2020. The petitioner is a 76 year old man and he has been in custody for the last 41 days. The investigation as against the petitioner is virtually complete. No further purpose would be served in the further detention of the petitioner. Hence, the petitioner may be released on bail.

7. The learned Public Prosecutor opposed the application. She however conceded the fact that the investigation as against the petitioner is complete. She submitted that, if the petitioner is enlarged on bail, stringent conditions may be imposed.

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 petitioner has been in incarceration for the last 41 days; that the investigation as

against the petitioner in the case is complete; the accused 6, 7 and 9 were granted bail by the Sessions Court by order in Crl.MP. No. 637/2020 and that no further purpose would be served on the petitioner's continued detention and also considering 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 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 fifty 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 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**

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