

B.A. TMP No. 84 of 2020 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

THURSDAY, THE 30TH DAY OF APRIL, 2020/10TH VAISAKHA, 1942

B.A TMP NO.84 OF 2020

**(In the Crime No.63/2020 of KASABA Police Station,
Palakkad)**

Petitioners/ Accused A1 and A2 :-

1.Santhosh, aged 27,
S/o Achuthan, Kakkathode House,
Thenari P.O., Palakkad

2.Akash, aged 20 yrs,
S/o Jayan, Puthan House, Thottiyapallam,
Thenari, Palakkad

By :- Adv Suseel M.Menon

Respondent/Complainant:

State of Kerala represented by
Station House Officer , Kasaba Police station,
Palakkad, through the Public Prosecutor,
High Court of Kerala, Ernakulam.

BY PUBLIC PROSECUTOR SRI.AJITH MURALI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
30.04.2020, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V.G.ARUN, J.

B.A. TMP No. 84 of 2020

Dated this the 30th day of April, 2020.

ORDER

The petitioners are the accused 1 and 2 in Crime No.63/2020 of the Kasaba Police Station, Palakkad registered for the offences under Sections 324, 448, 506, 308 r/w 34 of the Indian Penal Code. It is submitted that the offence under Section 326 was also been incorporated. According to the prosecution, on 23.02.2020 at around 9.30 p.m., the accused in furtherance of their common object, trespassed into the house of the defacto complainant and the 1st accused hit on the head of the defacto complainant's wife using an iron rod and when the defacto complainant resisted the attack the 2nd accused caused injury to the defacto complainant by waving a sword. It is further alleged that 1st accused had caused hurt to the mother of the defacto complainant and had threatened the defacto with death. The 1st accused was arrested on 29.2.2020 and the 2nd accused on 24.02.2020.

2. I have heard learned Counsel for the petitioners and the learned Public Prosecutor.

3. The learned Public Prosecutor would submit that it was considering the grievous nature of the injury, and the weapon that was used, Section 326 was subsequently incorporated. It is submitted that the investigation of the case in progress.

4. The learned Counsel for the petitioners would submit that they are prepared to abide by any conditions and considering the present scenario, they may be granted bail.

5. On a consideration of facts and circumstances, and taking into account the fact that the petitioners are in custody from 29.4.2020 and 24.2.2020 respectively, I deem it appropriate that they be enlarged on bail.

6. The well accepted principle of bail being the rule and jail the exception, has been reiterated by the Honourable Supreme Court time and again. [See *Nikesh Tarachand Shah v. Union of India [2018 (11) SCC 1 and P.Chidambaram v. Directorate of Enforcement [AIR 2019 SC 5272]*].

7. Considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona-virus pandemic, the Honourable 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 minimising the number of inmates inside prisons.

8. Having due regard to the above mentioned orders taking into account the fact that the petitioners are in custody from 29.4.2020 and 24.2.2020 respectively, I allow the bail application, subject to the following conditions

- i) The petitioners shall furnish to the Superintendent of the jail where they are incarcerated, their phone number and the address at which they would be residing after their release. The petitioners shall also provide the address of their proposed sureties and two of their near relatives and submit an undertaking that on release, they would abide by the conditions of the lock down imposed by the Central and State Government and be in quarantine, if so required.
- ii) On the aforementioned conditions being satisfied, the Superintendent of the Jail shall release the petitioners with due intimation about such release to the Station House Officers of the Police Station where the crime against the petitioners have been registered and the Police Station within the

jurisdiction of which the petitioners would be residing.

- iii) Immediately after release from prison, the petitioners shall report before the Station House Officer of the jurisdictional Police Station and shall produce a copy of the undertaking they had furnished before the Jail Superintendent. The Station House Officer concerned shall keep vigil on the whereabouts of the petitioners and shall ensure that the petitioners do not violate the terms of the undertaking.
- iv) The petitioners shall, within one week from commencement of functioning of the jurisdictional court, if the court is not functioning at present, 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.
- v) The petitioners shall co-operate with the investigation and shall not threaten or make any attempt to influence witnesses or tamper with the evidence.

V.G.ARUN
JUDGE