

B.A NO.2178 of 2020

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.S. DIAS

FRIDAY, THE 17TH DAY OF APRIL 2020/28th CHAITHRA 1942

B.A NO.2178 of 2020

(Crime No.5/2020 of Pulikunnu Police Station, Alappuzha District)

Petitioner/Accused No.2:

Manesh, Aged 37 years,
S/o.Mohanan, Kudunilathuchira House,
Kayalppuram muri, Ward No.2,
Pulinkunnu Panchayat, Alappuzha.

By Adv.B.Pramod

Respondent:

State of Kerala, rep. By the Public Prosecutor,
High Court of Kerala, Ernakulam.

By Public Prosecutor Sri.Amjad Ali

THIS B.A. HAVING BEEN FINALLY HEARD ON 17.04.2020, THE
COURT ON THE SAME PASSED THE FOLLOWING:

ORDER

This application is filed under Section 439 of the Code of Criminal Procedure.

2. The petitioner is the 2nd accused in Crime No.5 of 2020 of the Pulinkunnu Police Station registered under Sections 307, 326, 201(i)(d) r/w Section 34 of Indian Penal Code.

3. The prosecution case against the petitioner is that the petitioner and other accused out of their previous animosity with the defacto complainant on 03.01.2020 attacked the defacto complainant with weapons. The 1st accused had cut the neck of the defacto complainant with a chopper. The petitioner caused injuries on his body. However, the de facto complainant has survived.

4. The petitioner was arrested on 13.01.2020.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor through video

conferencing.

6. The learned counsel for the petitioner argued that the 1st accused was granted bail by this Court on 06.04.2020 by its order in BA No.2173 of 2020. Similarly, the 3rd accused was released on bail on the same day he was arrested. The final report has already been laid and no useful purpose would be served by continuous incarceration of the petitioner.

7. The learned Public Prosecutor opposed the application. He argued that the petitioner has criminal antecedents. He has involved in three other crimes. He was also convicted in Crime No.46 of 2006. The present crime has occurred out of political animosity between the accused and the defacto complainant. If the petitioner is released on bail, there is a likelihood of a law and order situation in the locality and also there is a likelihood of the petitioner committing similar crimes. 15 persons are involved in the above crime. Five persons are still at

large. Ten persons have been arrested and a split charge has to be filed. The case involves serious animosity between the parties.

8. It is trite law as held by the Hon'ble Supreme Court in ***Nikesh Tarachand Shah v. Union of India*** [2018 (11) SCC 1] that grant of bail is the rule and refusal is the exemption and that an accused who enjoys freedom will be in a much better position to defend himself than being in custody. The Hon'ble Supreme Court in In Re- Contagious of COVID-19 in prisons case (W.P.(C) No.1 of 2020) and a Full Bench of this Court in W.P.(C) No.9400 of 2020 (suo moto) have, *inter alia*, issued exhaustive guidelines to decongest the prisons in the country.

9. Considering the above facts and circumstances of the case and also the directions issued by the Hon'ble Supreme court and the Full Bench of this Court in view of the COVID-19 pandemic, I am of the opinion that the

petitioner is entitled to be enlarged on bail. Hence, I allow the above bail application on the following conditions:-

(i) The Superintendent of Jail where the petitioner is incarcerated is directed to release the petitioner on furnishing his phone number and also the phone number of his immediate relative. The Superintendent of the jail shall verify the details furnished by the petitioner and release the petitioner to the Station House Officer of the Police Station where the crime has been registered, who shall in turn release the petitioner.

(ii) The petitioner shall within one week from the re-opening of the jurisdictional court, if not already opened, shall execute a bond for a sum of Rs.50,000/- (Rupees fifteen 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 for a period of one month from today.

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

(v) In view of the antecedents of the petitioner, he shall be confined to his house only, for a period three months from today. The Investigating Officer shall oversee that the petitioner complies with the above direction.

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

B.A NO.2178 of 2020

7

Needless to mention that, if the petitioner violates any of the conditions above, the Station House Officer shall be at liberty to approach the Jurisdictional court and file appropriate applications, seeking for cancellation of the bail.

C.S.DIAS, JUDGE

kkj/17/04./2020