

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE RAJA VIJAYARAGHAVAN V

SATURDAY, THE 11TH DAY OF APRIL, 2020 /22ND CHAITHRA, 1942

BA TMP NO. 34 OF 2020

[CRIME NO.279/2020 OF KUNNIKODE POLICE STATION, KUNNIKODE,
KOLLAM DISTRICT]

PETITIONERS/ACCUSED NOS. 1 & 2:

1. RAHIM, AGED 58 YEARS, S/O. THANGALKUNJU,
RASEENA MANZIL, NEAR PULIMUKKU,
KUNNIKODE MURI, VILAKKUDY VILLAGE,
PUNALUR, KOLLAM DISTRICT.
2. RIYAS @ POTH, AGED 28 YEARS, S/O. RAHIM,
RASEENA MANZIL, NEAR PULIMUKKU,
KUNNIKODE MURI, VILAKKUDY VILLAGE,
PUNALUR, KOLLAM DISTRICT.

BY ADV.SRI. P.THOMAS GEEVERGHESE

RESPONDENTS/ STATE & COMPLAINANT:

STATE OF KERALA, PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-692 031.

BY PUBLIC PROSECUTOR SMT.PUSHPALATHA M.K.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11.04.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

This application is filed under Section 439 of the Cr.P.C.

2. The applicants herein are father and son respectively. They are arrayed as accused Nos. 1 and 2 in Crime No.279 of 2020 of the Kunnikode Police Station registered under Sections 341, 294(b), 323, 324, 307 r/w. Section 34 of the IPC.

3. Heard the learned counsel appearing for the applicants and the learned Public Prosecutor through Video Conferencing.

4 The learned counsel refers to Annexures- A to C and contends that the 1st accused is suffering from respiratory ailments and is a very ill man. He would also point out that as against the 2nd applicant, no specific over act is alleged by the informant. Finally it is submitted that the applicants have been in custody from 26.2.2020 and prays that they be released on bail.

5. The learned Public Prosecutor while opposing the prayer submitted that the 2nd accused is involved in other crimes as well.

6. I have considered the submission advanced and have gone through the records which are made available. It is the 1st accused, who has inflicted the

injury on the victim. The allegation against the 2nd applicant is vague. The records show that the investigation has progressed to the final stages. It is trite that the requirement for bail is to secure the attendance of the prisoner and it is the duty of the court to admit the accused to bail, wherever practical, unless there are strong grounds for supposing that such persons would not appear to take the trial. A presumed innocent person is entitled to have his freedom in the form of bail to enable him to establish his innocence at the trial. (See **G.Narasimhulu v. Public Prosecutor** [AIR 1978 SC 29]). As held in **Nikesh Tarachand Shah v. Union of India** [2018 (11) SCC 1] grant of bail is the rule and refusal is an exception and an accused person who enjoys freedom will be in a much better position to defend himself than if he were in custody.

7. I also take note of the fact that the Nation is facing an unprecedented and extraordinary outbreak of a pandemic and all steps are being taken to ensure that the Court premises do not contribute to the spread of the deadly virus which has taken the life of many people. A lockdown has been imposed and the citizens therein have been advised to practice social distancing and to quarantine themselves. The Hon'ble Supreme Court as well as this Court have suggested measures to reduce the physical presence of lawyers, litigants, court staff, paralegal personnel in courts across the country. Directions have also been issued to decongest the Jails. Directing the appearance of the petitioner

before the court below and insisting him to produce sureties and execute bonds will definitely have an adverse effect. In that view of the matter, I am of the considered opinion that the applicants herein can be granted provisional bail for a period of 30 days from today.

In the result, this application will stand allowed. The Superintendent of the jail wherein the applicants are incarcerated is directed to release the applicants provisionally on bail for a period of 30 days on the applicants executing personal bonds without sureties. The above order shall be subject to the following conditions:

- i. The applicants shall furnish an undertaking before the Superintendent of Jail concerned detailing the permanent place of their abode and the contact numbers of themselves and their near relatives. They shall undertake that they shall strictly comply with the lockdown imposed and the various directives issued by the Central as well as the State Government and that they shall remain in quarantine for a period of 30 days or such extended period as may be notified.
- ii. The Superintendent of Jail shall intimate the release of the applicants to the Station House Officer of the Police Station which has registered the crime.
- iii. On being released from prison, the applicants shall report before the jurisdictional police station and shall furnish a copy of the undertaking furnished before the Jail Superintendent. The SHO concerned shall ensure that the applicants do not leave the premises, where they have undertaken to remain in quarantine

till such time the lockdown period continues in force, otherwise than for emergent situations

- iv. The applicants shall not tamper with the evidence or influence the witnesses in any manner whatsoever.
- v. The applicants shall not commit any offense while on bail.
- vi. On the expiry of 30 days, ordered as above, or within three days of the withdrawal of the lockdown by the Government, whichever is earlier, the applicants shall appear before the jurisdictional Court and seek regular bail and the Court shall consider their application on its merits and pass appropriate orders.

If the applicants violate any of the conditions above, the Station House Officer may approach the jurisdictional Court and may move an application for cancellation of bail, which shall be considered and disposed of by the said Court, notwithstanding the fact that interim bail has been granted by this Court.

RAJA VIJAYARAGHAVAN.V.

JUDGE

ps/11/4/2020