

(2021) 05 KL CK 0075

In the High Court Of Kerala

Case No : Bail Application No. 2748 Of 2021

Ashique Valiyathodika And Ors

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 07-05-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Kerala Forest Act, 1961 — Section 2(f)(ii)(d), 27(i), 27(e), 279iv), 27(v), 52

Citation : (2021) 05 KL CK 0075

Hon'ble Judges : P.V. Kunhikrishnan, J

Bench : Single Bench

Advocate : P. Samsudin, M.K. Pushpalatha

Final Decision : Allowed

Judgement

1. This Bail Application filed under Section 438 of Criminal Procedure Code (Cr.P.C.) was heard through Video Conference.

2. The petitioners are the accused in crime No.1/2020 of the Padukka Forest Station Office, Malappuram. The above case is registered against the

petitioners alleging offences punishable under Section 27(i),(e),(iv), (v) r/w 2(f), ii (d) and Section 52 of the Kerala Forest Act.

3. The prosecution case is that, on 02.01.2020, while forest officialss of Padukka Forest Station, while conducting night patrolling noticed a tipper lorry

passing through the road and when signalled to stop the same, the driver and the other person after stopping the vehicle ran away, leaving behind the

vehicle. It is alleged that river sand was seized.

4. Heard the learned counsel for the petitioners and the learned Public Prosecutor. The counsel for the petitioners submitted that even if the entire

allegations are accepted, the offence is not made out against the petitioners. The

counsel submitted that the petitioners are ready to abide by any conditions, if this Court grant them bail. The Public Prosecutor opposed the Bail Application.

5. After hearing both sides, I think that this bail application can be allowed on stringent conditions. Whether the offences alleged are made out is a matter to be investigated by the Investigating Officers. I do not want to make any observations about the merit of the case. Considering the facts and circumstances of this case, this Bail application can be allowed on stringent conditions.

6. Moreover, the 2nd wave of COVID-19 is spreading in the country and the citizens are facing serious difficulties. In the state of Kerala, the 2nd wave of the pandemic is creating lot of problems and even the day-to-day life of the citizens are affected. Everyday, about 25,000 people are tested positive with COVID-19. In such circumstances, this Court has to consider this fact also while considering bail applications. The life is more important than anything. Therefore, I am considering this bail application based on the above pandemic situation.

7. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the Hon'ble 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 minimizing the number of inmates inside prisons. These happened during the 1st wave of COVID-19 season.

8. Moreover, it is a well accepted principle that, the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in Chidambaram P. v. Directorate of Enforcement (2019 (16) SCALE 870), after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that, the accused has the opportunity of securing fair trial.

9. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The petitioners shall appear before the Investigating Officer within three

weeks from today and shall undergo interrogation;

2. After interrogation, if the Investigating Officer proposes to arrest the petitioners, they shall be released on bail executing a bond for a sum of

Rs.50,000/-(Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the officer concerned;

3. The petitioners shall appear before the Investigating Officer for interrogation as and when required. The petitioners shall co-operate with the

investigation and shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to

dissuade him from disclosing such facts to the Court or to any police officer;

4. The petitioners shall not leave India without permission of the Court;

5. The petitioners shall not commit any offence similar to the offence alleged in this case.

6. The petitioners shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of

social distancing in the wake of Covid 19 pandemic;

7. If any of the above conditions are violated by the petitioners, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is

granted by this Court.