

Jentle George, vs State of Kerala,

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Court : Kerala

Decided On : Aug-02-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./6146/2024

Appellant : Jentle George,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS FRIDAY, THE 2ND DAY OF AUGUST 2024 / 11TH SRAVANA, 1946 BAIL APPL. NO. 6146 OF 2024 CRIME NO.241/2024 OF RAJAPURAM POLICE STATION, KASARGOD PETITIONERS/ACCUSED:

1 JENTLE GEORGE,AGED 35 YEARS S/O. GEORGE, PUTHANPURAYIL HOUSE, KOLICHAL, ERINJILAMKODE, PANATHADY VILLAGE, KASARAGODE, PIN - 2 JOSE JOSEPH,AGED 56 YEARS S/O. JOSEPH, PUTHANPURAYIL HOUSE, KOLICHAL, PANATHADY VILLAGE, VELLARIKUNDU TALUK, KASARAGODE, PIN - 671532 3 SONY THOMAS,AGED 53 YEARS S/O. THOMAS,

NJARAKKATTU HOUSE, PANATHADY VILLAGE, VELLARIKUNDU TALUK, KASARAGODE, PIN - 671532 4 AJU MATHEW, AGED 35 YEARS S/O. MATHEW, PUNNATHANATH HOUSE, KOLICAL, PANATHADY VILLAGE, VELLARIKUNDU TALUK, KASARAGODE, PIN - 5 RICHARD ELDOSE, AGED 28 YEARS S/O. ELDOSE, MUPPATTIL HOUSE, PAYYANAM, KANNARA POST, PEECHI VILLAGE, THRISSUR, PIN - 680652 BY ADVS. BEJOY JOSEPH P.J., M. RAMESH CHANDER (SR.) BALU TOM, GOVIND G. NAIR BONNY BENNY

RESPONDENT: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 SR. PUBLIC PROSECUTOR SMT. NEEMA T.V. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Dated this the 2nd day of August, 2024

ORDER

The application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, BNSS), by the accused 1 to 5 in Crime No.241/2024 of the Rajapuram Police Station, Kasargod, which is registered against the accused for allegedly committing the offence punishable under Section 3 r/w 25(1-B) (a) of the Arms Act. The petitioners were arrested and remanded to judicial custody on 02.07.2024.

2. The essence of the prosecution case is that; on

13.06.2024, at around 22.00 hours, the accused were found within the reserved forest in Panathady Village, with an unlicensed gun, with an intention to kill animals. The accused were arrested on the spot with the unlicensed gun. Thus, the accused have committed the above offences.

3. Heard; Sri. M.Ramesh Chander, the learned Senior Counsel appearing for the petitioners and Smt. Neema T.V., the learned Senior Public Prosecutor.

4. The learned Senior Counsel appearing for the petitioners submitted that the petitioners are totally innocent of the accusations levelled against them. They have been falsely implicated in the crime. There is no material to substantiate that the petitioners have committed the above offences. In any given case, the petitioners have been in judicial custody for the last one

month, the investigation in the case is practically complete and recovery has been effected. Furthermore, the petitioners do not have any criminal antecedents. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the

application. He submitted that the petitioners were found in conscious possession of an unlicensed gun which was intended to kill animals within the forest area. If the petitioners are released on bail, there is a likelihood of them intimidating the witnesses and tampering with evidence. Hence, the application may be dismissed.

6. The allegation against the petitioners is that, they were found within the reserved forest area with an

unlicensed gun. The petitioners were arrested on the spot with the gun. The fact remains that the petitioners have been in judicial custody for the last one month, the investigation in the case is complete and recovery has been effected. Furthermore, the petitioners do not have any criminal antecedents.

7. In *Sanjay Chandra v. CBI*, [2012 1 SCC 40], the

Honourable Supreme Court has categorically held that the fundamental postulate of criminal jurisprudence is the presumption of innocence, until a person is found guilty. Any imprisonment prior to conviction is to be considered as punitive and it would be improper on the part of the Court to refuse bail solely on the ground of former conduct.

8. In *Dataram Singh v. State of U.P.*, [(2018) 3

SCC 22] the Honourable Supreme Court observed that grant of bail is the rule and putting a person in jail is an exception. Even though the grant of bail is entirely the

discretion of the court, it has to be evaluated based on the facts and circumstances of each case and the discretion has to be exercised in a judicious and compassionate manner.

9. The principle that bail is the rule and jail is an

exception is on the touch stone of Article 21 of the Constitution of India. Once the charge sheet is filed, a strong case has to be made out for continuing a person in judicial custody. The right to bail cannot be denied merely due to the sentiments of the society.

10. On an anxious consideration of the facts, the rival submissions made across the Bar, and the

materials placed on record, particularly taking into consideration the fact that the petitioners have been in judicial custody for the last one month, the investigation in the case is complete and recovery has been effected, I am of the definite view that the petitioners further detention is unnecessary. Hence, I am inclined to allow the bail application, but subject to stringent conditions. In the result, the application is allowed, by directing the petitioners to be released on bail on them executing a bond for Rs.50,000/- (Rupees fifty thousand only) each with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

(i) The petitioners shall appear before the

Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is laid. They shall also appear before the Investigating Officer as and when required;

(ii) The petitioners shall not directly or indirectly

make any inducement, threat or procure to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;

(iii) The petitioners shall not commit any offence while they are on bail;

(iv) The petitioners shall surrender their passports,

if any, before the court below at the time of execution of the bond. If they have no passport, they shall file an affidavit to the effect before the court below on the date of execution of the bond;

(v) In case of violation of any of the conditions

mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

(vi) Applications for deletion/modification of the bail conditions shall be moved and entertained by the court below.

(vii) Needless to mention, it would be well within the

powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioners even while the petitioners are on bail as laid down by the Hon'ble Supreme Court in *Sushila Aggarwal v. State (NCT of Delhi)* and another [2020 (1) KHC 663]. SD/- C.S.DIAS,
JUDGE rmm/2/8/2024

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