

Vineesh, vs State of Kerala,

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Court : Kerala Orders

Decided On : Sep-28-2021

Judge : Honourable Mrs. Justice Shircy V.

Appeal No. : Bail Appl./6262/2021

Appellant : Vineesh,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHIRCY V. TUESDAY,
THE 28TH DAY OF SEPTEMBER 2021 / 6TH ASWINA, 1943 BAIL
APPL. NO. 6262 OF 2021 AGAINST THE ORDER IN CMP 2002/2021
OF JUDICIAL MAGISTRATE OF FIRST CLASS, SULTHANBATHERY,
WAYANAD CRIME NO. 281 OF 2021 OF MEENANGADI POLICE
STATION PETITIONER/ACCUSED NO.72: VINEESH, AGED 30 YEARS
S/O.VISWANATHAN, MOOTHAMPARAMBIL HOUSE,
THRIKKAIPETTA, WAYANAD-673 577. BY ADVS. M.P.ASHOK KUMAR
ASIF N BINDU SREEDHAR

RESPONDENT/STATE/COMPLAINANT: STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031.

OTHER PRESENT: SREEJA.V- SR.PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22.09.2021, ALONG WITH Bail Appl..6420/2021, THE COURT ON 28.09.2021 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHIRCY V. TUESDAY, THE 28TH DAY OF SEPTEMBER 2021 / 6TH ASWINA, 1943 BAIL APPL. NO. 6420 OF 2021

ORDER IN CMP 2002/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS,

SULTHANBATHERY, WAYANAD CRIME NO. 281 OF 2021 OF MEENANGADI POLICE STATION PETITIONERS/ACCUSED 64, 63 & 69: 1 ANTO AUGUSTIN, MOONGANANIYIL HOUSE, VAZHAVATTA P.O., WAYANAD - 673 122. 2 JOSEKUTTY AUGUSTIN MOONGANANIYIL HOUSE, VAZHAVATTA P.O., WAYANAD - 673 122. 3 ROJI AUGUSTIN MOONGANANIYIL HOUSE, VAZHAVATTA P.O., WAYANAD - 673 122. BY ADVS. M.P.ASHOK KUMAR BINDU SREEDHAR ASIF N RESPONDENT/STATE/COMPLAINANT: STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031. SR. PP SMT. SREEJA V THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22.09.2021, ALONG WITH Bail Appl..6262/2021, THE COURT ON 28.09.2021 PASSED THE FOLLOWING:

ORDER

[Bail Appl. Nos.6262/2021, 6420/2021] Dated this the 28th day of September, 2021 These applications are for regular bail filed under Section 439 of the Code of Criminal Procedure.

2. B.A. No. 6420 of 2021 is filed by accused Nos. 64,

63 and 69 in Crime No. 281 of 2021 of Meenangadi Police Station registered for the offences punishable under Sections 406, 409, 420, 468, 471, 212 read with

Section 34 of the Indian penal Code, Section 3(1) of the Prevention of Damage to Public Property Act and Section 10 of the Kerala Land Conservancy Act.

3. B.A. No. 6262 of 2021 is filed by accused No. 72 of the very same crime.

4. The brief facts of the prosecution case are as

follows: The petitioners along with the other accused illegally and deceitfully cut 204.635 cubic meters of Rosewood trees (*Dalbergia latifolia*) worth Rs.8 Crore from the lands assigned under Kerala Land Assignment Rules, 1964 of Muttill South, Kallupadi and Vazhavatta of Vythiri Taluk, in the possession of accused Nos. 1 to 68, and reserved to the Government, without the permission or knowledge of the Revenue Department during the month of November and December of 2020 and January 2021 and illegally transported certain logs and attempted to transport the remaining trees thus cut down and thereby caused a loss to the tune of Rs. 8 Crore to the Government. Thus, they have committed the aforesaid offences.

5. The petitioners are in custody since 28.07.2021.

6. Heard Adv. M.P. Ashok Kumar, the learned counsel for the petitioners and Smt. Sreeja V, the learned Senior Public Prosecutor. Perused the records.

7. The learned counsel for the petitioners would submit

that the petitioners have not committed any offence as alleged by the prosecution. The trees were cut from the property in Muttill village which is not a notified area in Wayanad District. They cut and removed trees on the basis of the orders issued by the Government of Kerala. Though the orders were recalled subsequently it was without retrospective effect. But they have been charged for the aforementioned offences apart under the provisions of the Forest Act and so, they are languishing in jail since the date of their arrest.

8. Per contra, the learned Public Prosecutor contended

that the petitioners in B.A. No. 6420 of 2021, fraudulently with the dishonest intention to cheat and to misappropriate the assets of the Government for their advantage, approached the persons holding land under assignment as per patta issued by the Government, and informed that, they obtained necessary sanction to cut and remove Rosewood trees from the patta land and thus cut and removed extensively the Royal trees worth 8 Crore, reserved to the Government after paying meager amount to them as value of the trees cut down, in violation of the provisions of the Kerala Land Assignment Rules. Thereby, they have committed fraud with the connivance and assistance of certain Government officials, cheated the Government and the land owners which includes poor tribal people and caused loss of tune of Rs.8 Crore to the Government by indulging in the illegal activities.

9. According to the Petitioners 1 and 2 they are the Managing Directors of M/s.Asian Surya Udyog Pvt. Ltd. and Managing Partners of M/s.Asian Motors. Petitioner No.3 is a timber merchant.

10. The 1st petitioner claims title over 45 cents of land

in Re-sy No.296/3 as per sale deed No. 1201/2013 of SRO, Kalpetta. Ext.A1 patta No.189/68 dated 07.01.1974 is the prior title deed. The same was assigned in the name of one Kamalakshi Amma. Annexure A2 is another patta in the name of one V.K. Divakaran with respect to a property in Sy. No. 633/1A A1. The 2 nd petitioner had purchased the property as per Sale deed No. 920/13 of the very same SRO.

11. Annexure A1 was issued in the year 1974 and A2

in the year 1993. The patta were issued as per the Kerala Land Assignment Rules with certain conditions. Conditions 1 and 2 which are quite relevant, are reiterated for the sake of convenience: 1. The full right

over all the trees within the grant and specified in the schedule vests in the Government and the assignee is bound to take care of all such trees standing on the land at the time of assignment or that may come into existence subsequent to it.

2. The assignee is bound to afford all facilities to the officers of Government in the matter of inspecting land periodically for checking the trees referred to in condition (1) above and removing them, if necessary.

12. In Annexure A1 patta, the schedule with the name

of the trees, number and other particulars are specifically mentioned with the above two conditions among others. The name of the trees are 1. Teak, 2. Blackwood, 3. Ebony, and 4. Sandalwood. It is also specifically mentioned in the schedule appended to the patta that apart from those trees, Rosewood trees are also there. The particulars of Rosewood trees are specifically shown with measurements as : Name of trees No. Other particulars

1. Rosewood 1 126 x 600

2. -Do- 1 202 x 900

3. -Do- 1 170 x 900 In Annexure A2 patta, the trees mentioned are 1. Teak,

2. Karimaram, 3. Karinthali, 4. Sandalwood,

5. Rosewood. So, as per the conditions 1 and 2 in Annexures A1 and A2, the right over all the trees specified in the schedule vests in the Government.

13. The learned counsel for the petitioners submit that

the description of Rosewood are seen included in both Annexures A1 and A2 by inserting the same in ink and so, the trees which are shown in printed letters in the documents alone can be reckoned or considered as the trees standing in the land and the additional insertion with details of

Rosewood in the patta indicate that it was not there at the time of issuance of the patta.

14. It is well settled that while considering bail

application, it is not necessary to launch into detailed evaluation of the facts on merits as trial of case is still to take place. So, a meticulous evaluation is not expected. Still, whether a prima facie case is there against the accused/petitioners have to be verified as grant of bail is definitely a matter involving exercise of judicial discretion. So, this Court is compelled to verify certain provisions of various enactments implemented to protect and preserve trees, as trees are essential for life. Before that it is to be noted that the Sale deed Nos.1201/13 and 920/13 have not been produced by the petitioners for perusal. So, this court is unable to verify whether the description of the trees mentioned in Annexures A1 and A2 were also included or not in the title deeds. In the absence of those documents, it could only be presumed that all trees described in the patta were also there when petitioners 1 and 2 have purchased the land from the respective assignees.

15. Land Assignment Rules, 1964 was amended as per

the Notification dated 17th August, 2017 in exercise of the powers conferred under Section 7 of the Land Assignment Act, 1960. As per this amendment, the first proviso to Sub-Rule (1) of Rule 7 is substituted as Provided that the total extent of land, if any, owned or

held by him in proprietary right or with security of tenure is less

than the limits laid down by sub-rule (1) of Rule 5. Rule 8 has also been amended by adding Rule 8(1A) which reads as follows:

Notwithstanding anything contained in sub-rule (1), unoccupied lands assigned on registry shall be heritable but not alienable for a period of

twelve years from the date of assignment on registry. Therefore, the purchase of the property by the petitioners as per the above referred sale deeds from the assignees are valid. While carrying out the amendment to the form of patta (Appendix II) for occupied lands, the conditions prescribed are also seen amended. The amended second clause of the conditions is as follows:

2. The right over trees in the assigned land shall be as per Rule 10(3) of the Kerala Land Assignment Rules, 1964 provided Section 22 of the Kerala Preservation of Trees Act, 1986 (35 of 1986) read with Section 4 thereof shall apply. Rule 22 of the Kerala Preservation of Trees Act 1986 reads as follows: 22. Restriction regarding cutting etc., of trees in future assignments.- Notwithstanding anything contained in any law for the time being in force, any assignment after the commencement of this Act, of land belonging to the Government, under any law for the time being in force shall be subject to the condition that the assignee shall not, without the previous permission in writing of the authorized officer, cut, uproot, or burn or cause to be cut, uprooted or burnt, any tree standing on such land at the time of such assignment, and the provisions of this Act shall apply in relation to such permission as if they apply in relation to a permission under Section 4. Section 4 deals with the restriction regarding cutting etc., of trees, which would say that no person shall, without previous permission in writing of the authorized officer, cut, uproot or burn or cause to be cut, uprooted or burnt any tree. Clause (2) says that permission shall not be refused if

(a) the tree constitutes a danger to life or property or (b) the tree is dead, deceased or windfallen.

16. Tree is defined in Section 2 (e) and Rosewood is also included in the definition.

17. Rule (10)3 of the Kerala Land Assignment Rules

says assignee shall also be liable to pay the value of the trees in parts A and B of Appendix III subject to certain conditions. Rosewood is not included in Part A or B.

18. The Department of Revenue by G.O. (Ms). No.261/2020/Rev dated 24.10.2020 issued a Government

Order stating that some confusion and ambiguities are

noticed regarding the ownership of the trees in the land assigned to them. The said G.O. reads as follows:

File No. REV-U3/187/2019- REV "Official Language - Regional Language" Government of Kerala Abstract Issuing an order giving instructions relating to cutting down the reserved trees (except sandalwood) in the lease land as per Kerala Land Assignment Rules, 1964. ----- Department of Revenue (U) G.O.(Ms).No.261/2020/Rev. Thiruvananthapuram Date: 24.10.20 ----- Ref: 1. As per S.U(P) No. 60/2017/key. dated 17.08.2017.

2. As per Circular - Rev. U3/187/2019 dated 11.03.2020.

ORDER

As per Ref (1) an order has been issued, giving the right to the farmers to cut down trees which were planted by the farmers and naturally grown on the land allotted under the Kerala Land Assignment Rules, 1964.

2. As a result of various confusions and ambiguities

in the matter, a direction has been issued suggesting that the ownership of all the trees planted by the farmers in the lease land except sandalwood were vested with "Pattadhars" as per Ref (2) dated 11.03.2020, and that the provisions in the old lease form need not be considered from 17.08.17 onwards since on that day, the amendment

took place as per Ref (1).

3. The Government examined the matter in detail as it was noted that confusion is still existing. Rule 10(3)

(a) of Kerala Land Assignment Rules, 1964 stipulates that

the landlord must pay the price of certain trees on the land at the time of acquisition. As per the relevant portion of Clause (b), it was stated that, before the land was allotted, if the said land belongs to the person to whom the land was allotted or his predecessors need not pay the price of certain trees which was as stated in Part A of the Appendix III in the Rules.

4. Section 22 of Kerala Preservation of Trees Act,

1986 stipulates that to cut down the trees from the land at the time of allotment by the Government after its enactment, requires the permission of the officer in charge. Therefore, the farmers need not seek permission to cut down the trees which they have planted and naturally grown on the land in which they got assignment as per Section 22 of Kerala Preservation of Trees Act, 1986.

5. In Section 3 of the Promotion of Trees Growth

Act, 2005, it is stipulated that the owner should plant the trees on the non-forest land. Section 6 of the act states that whatever be the contents of other acts, the right to cut down the trees on the non-forest land vested with the farmers except the sandalwood.

6. In the above circumstances, it is clarified that

under the existing rules and regulations, all the trees except sandalwood, the trees which are planted by the farmers and the trees naturally grown on the land allotted under the rules of 1994 belongs to the farmers and

they can cut down such trees and no special permission is required for it. Serious action will be taken against such officials who passed the orders of obstruction to cut down such trees or directly make obstruction by considering it as a serious misconduct.

(As per Government Order) Dr. A. Jayathilak, IAS Principal Secretary The Circular dated 11.03.2020 referred in the G.O. reads as follows: Government of Kerala Department of Revenue (U) No. U3/187/2019/Revenue Department of Revenue (U) Thiruvananthapuram Date: 11.03.2020 CIRCULAR Sub:- Department of Revenue - Relating to Direction for clarification on cutting down of reserved trees planted by the farmers -and trees which are spontaneously grown on the lease land.

As per G.O (P) No. 60/2017/Rev. dated 17.08.2017, SRO No. 621/17 permission was granted to "Pattadhars" to cut down the trees from the lease land which are planted by the farmers and spontaneously grown except the sandalwood. However, the department noted that since there are lot of ambiguities regarding cutting of trees in various parts of the State and in many places, the "Pattadhars" are not in a position to cut down the trees. In addition to this a number of applications received seeking permission to cut down the reserved trees including the teak planted by the farmers on the lease land provided under the Kerala Land Registration Rules. The Hon'ble Minister of Revenue had convened several meetings in the presence of the Hon'ble Minister of Forests with the officials of the Revenue and Forest Departments on this subject. Accordingly, it was decided at the meeting that clarification should be given to all District Collectors to resolve the ambiguities in the matter. As per the notification of SRO No.621/17 issued by amending the terms of the lease, it is clearly stated that the ownership of all trees retained on the lease land except the sandalwood vested with the "Pattadhars" since the SRO No. 621/2017 is existing onwards 17.08.17, the provisions in the old form need not to be considered from that date.

Dr. Venu V. Principal Secretary

19. But a Division Bench of this Court on 8 th July, 2020

in W.P.(C) No. 13678 of 2020 has stayed the operation of the Circular dated 11.03.2020. Later, the Government by G.O. (Ms.) No. 30/2021/RD/2021 repealed the Circular dated 11.03.2020 and the G.O dated 24.10.2020. The said Government Order reads as follows: File No.REV-U3/187/2019-REV G.O.(Ms) No.30/2021/RD "Official Language - Regional Language" Government of Kerala Abstract Issuing an order by repealing the circular and Government

order that gives instructions relating to cutting down the

reserved trees except sandalwood in the lease land as per Kerala Land Assignment Rules, 1964.
----- Department of Revenue (U) G.O.(Ms.) No. /2021/Rev. Thiruvananthapuram#Approved Date# ----- Ref: 1. As per Circular-Rev. U3/187/2019 dated 11.03.20.

2. As per G.O(KI)/261/2020 Rev. dated 24.10.2020.

ORDER

A circular- Ref (1) has been issued stating that as per the notification of SRO No.621/17 which was issued by amending the terms of the lease, it is clearly stated that the ownership of all trees retained on the lease land except the sandalwood vested with the "Pattadhars" since the SRO No. 621/2017 is existing onwards 17.08.17, the provisions in the old lease form need not be considered from that date.

2. Ref (2) order has been issued stating that in the

land allotted as per the Kerala Land Assignment Rules, 1964, only farmers have the right over the trees, except sandalwood, which were planted, naturally grown, and reserved, by paying the price at the time of granting lease for the land, and to

cut down such trees, no special permission is required for it.

3. Since cases were pending before the Hon'ble

High Court questioning the above said circular and order

which was issued relating to the cutting down of trees on the lease land and although the terms and conditions of the scheduled trees on the lease land under the Land Assignment Rules, 1964 are not included in the lease form after 17.08.17 and also the definition for "Trees" in The Kerala Preservation of Trees Act, 1986 and the definition for "Specified Tree" in The Kerala Promotion of Tree Growth in Non-Forest Areas Act, 2005 was different from the objectives and the definitions stated in Land Assignment Rules, 1964 and it is also come to the notice of the Government that as they received complaint regarding the cutting down of trees falsely interpreting the order as per Ref (2) and moreover the cutting down of the trees on the land provided and its conditions should be regulated by the Land Assignment Rules of 1964, so an order has been issued by repealing the Ref

(1) circular and Ref (2) Government order that giving instructions relating to cutting down the reserved trees except sandalwood in the lease land as per Kerala Land Assignment Rules, 1964. (As per Government Order) Dr. A. Jayathilak, IAS Principal Secretary

20. The learned Counsel has strenuously argued that

as per Section 7 of the Land Assignment Act, the Government can make rules regarding assignment either prospectively or retrospectively about the matters shown as (a) to (q) by publishing in Gazette and thereupon they shall have the force of law. But as per sub-clause (3) of section 7, the rules made under this Act shall be laid for not less than fourteen days before the Legislative Assembly. But here such a procedure was not followed and so, the above referred Government Order has no validity in

the eyes of law.

21. For the sake of convenience, sub-clause (3) of Section 7 is also reproduced which reads as follows:

(3) All the rules made under this Act shall be laid for not less than fourteen days before the Legislative Assembly, as soon as possible after they are made, and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

22. Here, it is pointed out by the learned counsel, that

as this Government Order, repealing the earlier circular and G.O. relating to cutting down of trees on lease land, has not been placed before the Legislative Assembly, the G.O. has no legal validity in the eyes of law. But, the applications before me are only bail applications as the petitioners and certain others were booked for committing offences under the provisions of the Indian Penal Code, the PDPP Act as well Kerala Land Conservancy Act. Therefore, it is not necessary to consider the legal validity of the G.O. meticulously in this application. Moreover, it is a well settled legal proposition that executive orders which runs counter to or inconsistent with the statutory rules cannot override the statutory provisions. However, the validity of the G.O is yet to be challenged in appropriate proceedings .

23. As per Section 2 (e) of The Kerala Preservation of

Trees Act 1986 Rosewood (*Dalbergia latifolia*) is coming under the definition of "Tree". The Kerala Preservation of Trees Act 1986 is enacted for preservation of trees, to prevent indiscriminate felling and destruction of trees to prevent soil erosion and destruction and loss of the timber wealth in State of Kerala. Though by amendment Sub clause (6) was inserted to Section 4 (Act 28 of 2003) no modification or change is made

with respect to the restriction regarding cutting of trees, included in Section 2 (e). Moreover, it is to be noted that the Kerala Promotion of Trees Growth In Non-Forest Areas Act, 2005 was enacted to promote cultivation of trees in non-forest areas of the state, in order to increase green cover, preserve bio-diversity, and arrest soil erosion and to increase the availability of timber and bamboo for industry.

24. Here, the learned counsel has produced Annexure

A5, certificate of the Village Officer of Muttill South issued in favour of 1st petitioner (accused No.64) so as to produce before the Range Officer. This certificate was issued on the basis of G.O. dated 24.10.2020 to the effect that no permission is required to cut down the trees except sandal wood. It is most significant to note that Annexure A11 series are the statements obtained by the petitioners from the assignees of the land for purchase of the trees standing in the assigned land. The genuineness of the same are matters to be considered only at a later stage at the time of trial of the case. It appears that immediately after the G.O. dated 24.10.2010, the 2nd petitioner submitted an application before the Range Officer for permission to transport Rosewood logs. But the Range Officer declined to grant permission in the absence of required documents. Then an application has been filed before the Judicial First Class Magistrate Court, Kalpetta against the Forest Range Officer, Melpadi alleging that he has not issued transit permit to transport the timber cut from the properties possessed by various persons. The learned Judicial First Class Magistrate after giving an opportunity to the respondent (Range Officer) to file statement, dismissed the application submitted by the 2nd petitioner. (The copy of the petition as well the order have not been produced for perusal)

25. At this juncture, it is apposite to refer to Section 6 of Kerala Promotion of Tree Growth in non-forest areas Act, 2005 (for short The Act 2005). The said provision reads as under:

"6. Right of owners to cut and remove trees in non-notified areas in non-forest land. (1) Notwithstanding anything contained in any other law for the time being in force and subject to the other provisions of this Act, every owner on non-forest land in a non-notified area shall have the right to cut and transport any tree, other than sandalwood tree, standing on his land: Provided that the provision of this sub-section shall not apply to trees, if any, reserved by the Government at the time of assignment of such land or trees standing on any land notified under section 5 of the Kerala Preservation of Trees Act, 1986 (35 of 1986) or the areas notified by the Custodian under the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (21 of 2005).

(2) xxx xxx

(3) xxx xxx

(4) xxx xxx

(5) Where a specified tree is to be cut or any timber of

a specified tree is to be transported from any non-forest land to any other place, the owner of such tree shall, before cutting the tree or transporting the timber, as the case may be, file before the Authorized Officer having jurisdiction over the area, a declaration containing details such as the survey number of the land from which the tree is to be cut, number of trees, species of trees, quantity of timber and the place to which such timber is being transported, either directly or sent it by registered post with acknowledgment due.

(6) xxx xxx

(7) xxx xxx

(8) xxx xxx

26. As defined under the Section 2(e) of Act 2005

Rosewood is coming under the category of specified tree. The petitioners have no case that a declaration as contemplated under Rule 3 of the Rules (Kerala Promotion of Tree Growth in Non-Forest Areas Rules ,2011)had been filed in Form No.1 in duplicate before the Authorized officer having jurisdiction and any permission was granted by the Authorized officer after inspection. Therefore, the refusal of the Forest Range Officer to accord permission for transportation of Rosewood logs appears to be prima facie correct. Thereafter, this crime has been registered against these petitioners, the property owners as well the officials of the Revenue Department in Kalpetta. Apart from this crime, other cases have also been registered against these petitioners and now a Special Investigation team is investigating the cases. The petitioners are highly influential persons and the learned Public Prosecutor has expressed an apprehension that if they are released on bail, there is every possibility to tamper with the investigation of the case and evidence by misusing their political power and money. Moreover, the application is also opposed as these petitioners are having criminal antecedents and in fact the 1st accused is involved in more than 15 cases registered before various police stations. Petitioners are also accused in a case registered in Karnataka State. The said submission was vehemently opposed by the learned counsel for the petitioners by pointing out that though some cases were registered they were acquitted in most of the cases. Some cases were dropped and some cases were quashed by this court and all proceedings were also stayed by this court with respect to a case which has been registered in the year 2019 as Crime No. 2146 of 2019. So, according to the learned counsel, as false cases have been registered against these petitioners, they were compelled to approach this court for their release on bail. So, bail cannot be denied by pointing out the criminal antecedents, is the submission of the learned counsel for the petitioners.

27. It is true that in some cases they were acquitted,

some cases were compounded, dropped and some cases were quashed by this court. But cases are still pending against these petitioners. It is well settled that criminal antecedents of accused must be weighed for the purpose of granting bail. No doubt, the gravity of the offences alleged against these petitioners are grave and serious in nature as they illegally cut and attempted to remove very valuable and royal trees, the assets of State of Kerala. Prima facie, the petitioners have attempted to stealthy cut and remove the royal trees and misappropriate the valuable assets of the State. Prima facie, it appears that some Government officials expected to work with absolute sincerity joined hand in glove with the petitioners to do this illegal act and caused loss to the tune of Rs.8 Crore to the State of Kerala. The records indicate necessary meeting of the minds. The argument advanced by the learned counsel for the petitioners that recovery of almost all the Rosewood logs have been effected and therefore, no loss had been caused to the State, is not at all a good or plausible argument. Prima facie it appears that they have destroyed the assets of the State of Kerala and in fact caused untimely death to the royal trees, expected to remain in our State as our assets for decades, which could not be assessed or predicted at this stage. So, effecting recovery of the logs which were cut down illegally is not at all a ground to view the criminal act done by them lightly.

28. The learned counsel for the petitioners further

submitted that the State is against them and in order to wreck vengeance upon them for no reason, they are falsely implicated in the case. Needless to mention that the State cannot close eyes to such illegal and criminal activities. It is necessary to mention that the petitioners have no case that any permission was obtained from authorized officer to cut down the specified trees (*Dalbergia latifolia*), but according to them permission was not required. It appears that the Range Forest Officer,

Meppadi Range rightly and correctly refused permission to the 2 nd petitioner to transport the illegally cut Rosewood logs from various parts of Wayanad District. So, the plea of false implication is only to be rejected.

29. Taking into consideration of the nature of

accusation, the seriousness of the offences committed, reasonable apprehension of tampering with the evidence, and most importantly the larger interest of the State and public, this court is reluctant to exercise the judicial discretion to grant bail in favor of the petitioners. So, on merits, the petitioners are not entitled to be released on bail.

30. But the petitioners are under arrest since

28.07.2021. So, from 29.07.2021 till date, they have completed 60 days in custody. If investigation is not complete and no charge sheet is filed within the stipulated period, they are entitled for default bail and for that they could approach the trial court, if so advised, which would be decided on its own merits by the Jurisdictional Court. However, these bail applications filed by the petitioners under Section 439 Cr.P.C, are not liable to be allowed as prayed for and they are not entitled to be released on bail as requested by the learned counsel for the petitioners.

Accordingly, both these applications stand dismissed. Sd/- SHIRCY V JUDGE sb

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