

Jayaprakash.K.M vs State of Kerala

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Court : Kerala

Decided On : Jul-09-2020

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Bail Appl./1736/2020

Appellant : Jayaprakash.K.M

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
THURSDAY, THE 09TH DAY OF JULY 2020 / 18TH ASHADHA, 1942
Bail Appl..No.1736 OF 2020 O.R NO.3/2019 OF Mannamangalam Forest
Station Office, Thrissur PETITIONER/ACCUSED NO.2:
JAYAPRAKASH.K.M, AGED 47 YEARS, S/O. MANIKYAN,
KADINAKKARA HOUSE, ELANAD VILLAGE, THALAPPILLY TALUK,
THRISSUR DISTRICT-680 586 BY ADVS. SRI.V.N.HARIDAS
SMT.SIBY.P.JOSE SRI.K.T.BOSCO RESPONDENTS/STATE: 1 STATE
OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA-682 031 2 THE RANGE OFFICER,
MANNAMANGALAM FOREST STATION, THRISSUR DISTRICT-680

586 SR.PP. SRI.D.CHANDRASENAN THIS BAIL APPLICATION
HAVING COME UP FOR ADMISSION ON 09.07.2020, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING: B.A.No.1736/2020 2

ORDER

Dated this the 9th day of July 2020 This Bail Application is filed under Section 438 of Criminal Procedure Code.

2. Second accused in O.R.No.3/2019 of Mannamangalam Forest Station, Thrissur District, is the petitioner in this bail

application. The above case is registered against the petitioner and two others alleging the offences punishable under Sections 9, 39(1)(b)(d), 44(1)(v), 57 and 51(1) of Wild Life Protection Act, 1972.

3. The prosecution case is that the 2 nd accused killed a wild pig on 18.11.2019 after trespassing into the forest land and the 1st and the 3rd accused purchased the meat.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

5. The learned counsel for the petitioner submitted that he filed a bail application before the Sessions Court, Thrissur as CrI.M.C. No.2134/2019. The learned Sessions Judge dismissed the said bail application because there is no documents to show B.A.No.1736/2020 3

that the petitioner Jayaprakash is the Prakasan, who is arrayed as the 2nd accused in the case. Subsequently, the petitioner again filed CrI.M.C No.25/2020 apprehending arrest before the same

court. That application was dismissed by the learned Sessions Judge, because at that time, the prosecution submitted that the petitioner is an accused. According to the learned counsel for the petitioner, he is not connected with the case. Originally, in the mahazar the 2nd accused is arrayed as one Prakasan. Since the petitioner filed the bail application, he was implicated by the forest officials. He submitted

that he has no connection with the forest offences. He is not involved in any case.

6. The learned Public Prosecutor seriously opposed the bail application. The Public Prosecutor submitted that the allegation against the petitioner is that he hunted the animal and

distributed the meat to the 1 st and 3rd accused. The custodial interrogation of the petitioner is necessary. The learned Public Prosecutor also submitted that it is a serious case in which 95 Kgs of meat of a wild animal is involved.

7. It is an admitted case that the 3 rd accused in the above crime approached this Court in an application under Section 438 Cr.P.C and this Court granted anticipatory bail as per order dated 3.2.2020 in B.A No.163/2020. B.A.No.1736/2020 4

8. The learned counsel for the petitioner says that there is

a dispute regarding the identity of the 2 nd accused. According to him, his name is Jayaprakash and in the mahazar the name of the 2nd accused is mentioned as Prakasan. According to the counsel simply because he filed the bail application before the Sessions Court apprehending arrest, his name is implicated in this case. He has no connection with the forest offences.

9. The learned Public Prosecutor submitted that, it is not

reported that the petitioner is involved in any other case. But the learned Public Prosecutor submitted that in that area several forest offences are registered and the case of the prosecution is that the petitioner is also involved in the case. These are the matters to be investigated by the forest officials. The question of identity is also to be decided after investigation of the case. For that purpose there can be a direction to the petitioner to surrender before the forest officials. Since one of the accused is already released on bail under Section 438 Cr.P.C, it is not proper on my part to deny bail to the petitioner.

10. 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 B.A.No.1736/2020 5 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.

11. 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.

12. 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 petitioner shall appear before the Investigating Officer within ten days from today and shall undergo interrogation.

2. After interrogation, if the Investigating

Officer propose to arrest the petitioner, he 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 B.A.No.1736/2020 6 like sum to the satisfaction of the officer concerned.

3. The petitioner shall appear before the

Investigating Officer as and when required. The petitioner shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

4. The petitioner 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.

5. The petitioner shall appear before the investigating officer on all Mondays and Fridays at 10 am till the final report is filed by the investigating officer in this case.

6. The petitioner shall surrender his passport before the investigating officer. If he is not having any passport, he will file an affidavit to that effect before the investigating officer. B.A.No.1736/2020 7

7. The petitioner shall not commit any similar offence.

8. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court. Sd/- P.V.KUNHIKRISHNAN JUDGE ab

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