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Arshad vs State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1764318

Court : Kerala

Decided On : Apr-17-2020

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./2355/2020

Appellant : Arshad

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT: THE HONOURABLE MR.JUSTICE C.S. DIAS FRIDAY, THE 17TH DAY OF APRIL 2020/28th CHAITHRA 1942 (in Crime No.486/2019 of Chavakad Police Station, Thrissur District) Petitioners/Accused No.3 and 8 :-

1. Arshad, aged 23 years, S/o.Hameed, Chungonnath House, Thozhupadam Desom, Panchal, Chelakkara, Thrissur District.

2. Abdul Shameer, aged 28 years, S/o.Sulaiman, Parakkal House, Thekkumkara, Wadakkanchery, Thrissur District. By Adv.E.A Haris Respondent/Complainant

1. State of Kerala, represented by Public Prosecutor, High Court of Kerala, Ernakulam. By Public Prosecutor Sri.Amjad Ali THIS B.A. HAVING BEEN FINALLY HEARD ON 17.04.2020, THE COURT ON THE SAME PASSED THE FOLLOWING:

ORDER

This application is filed under Section 439 of the Code of Criminal Procedure.

2. The petitioners are the 3rd and 8th accused in

Crime No.486 of 2019 of the Chavakkad Police Station. The petitioners are alleged to have committed the offences punishable under Sections 143, 147, 148, 153, 324, 326, 307, 506(ii), 120(b), 201, 212 and 302 r/w sections 149 of the Indian Penal Code and Section 27 of the Arms Act.

3. The prosecution case against the petitioners is that the petitioners entered into a criminal conspiracy and formed an unlawful assembly with deadly weapons and committed the murder of one late Sri.Noushad.

4. The petitioners were arrested on 20.09.2019 and 02.10.2019, respectively. Their applications for bail were dismissed by the Sessions Court, Thrissur by its

order dated 07.02.2020 in Crl.M.C.No.160 of 2020.

5. Heard the learned counsel for the petitioners and the learned Public Prosecutor, through video- conferencing.

6. The learned counsel for the petitioners argued

that accused Nos.1,2,4, 5, 6 and 7 have already been granted bail. In fact, accused 5 and 6 have been granted bail by this Court in BA Nos.7497 of 2019 and 7848 of 2019, respectively. It is contended that the learned Sessions Judge had dismissed the application only on the ground that the Investigating Officer had moved this Court for cancellation of bail granted to accused 1,2,4 and 7. According to him, the final report has been laid as early as on 31.10.2019. Hence, no

purpose would be served by continuous incarceration of the petitioners. He prayed that the bail application be allowed

7. The learned Public Prosecutor vehemently

opposed the application. He argued that 15 persons are involved in the above crime. Five persons are still at large. Ten persons have been arrested and a split charge has been filed. The case involves serious animosity between the parties. If the petitioners are enlarged on bail, there may be a law and order situation in the area.

8. It is trite law as held by the Hon'ble Supreme

Court in Nikesh Tarachand Shah v. Union of India [2018 (11) SCC 1] that grant of bail is the rule and refusal is the exemption. The Hon'ble Supreme Court in In Re-Contagious of COVID-19 in prisons case (W.P.(C) No.1 of 2020) and a Full Bench of this Court in W.P.(C) No.9400 of 2020 (suo moto) have, inter alia, held that in

order to de-congest the prisons, it is advisable that the

persons undergoing incarceration may be enlarged on bail.

9. Considering the facts and circumstances of the case and also the fact the directions issued by the Honourable Supreme Court and the full Bench of this Court in view of the COVID-19 pandemic, I am of the opinion that the petitioners are entitled to be enlarged on bail. Hence, I allow the above bail application on the following conditions.

(i) The Superintendent of Jail where the

> petitioners are incarcerated is directed to release the petitioners on them furnishing their phone numbers and also the phone numbers of their immediate relatives. The Superintendent of jail shall verify the details furnished by the petitioners and release the petitioners to the Station House Officer of the Police Station where the crime has been registered, who shall in turn release the petitioner.

(ii) The petitioners shall within one week from the re-opening of the jurisdictional court, if not already opened, shall execute a bond for a sum of Rs.50,000/- with two solvent sureties for the like sum each to the satisfaction of the jurisdictional court.

(iii) The petitioners shall appear before the Investigating Officer on all Saturdays between 10.00 a.m and 11 a.m for a period of one month.

(iv) The petitioners shall not tamper with the evidence or influence the witnesses in the case, in any manner, whatsoever.

(v) The petitioners shall not commit any offence while on bail.

(vi) The petitioners shall not leave the

country without the permission of the jurisdictional court. Needless to mention that, if the petitioners violate any of the conditions above, the Station House Officer shall be at liberty to approach the Jurisdictional court and file appropriate applications, seeking for cancellation of the bail. Sd/- C.S.DIAS, JUDGE kkj/17/04./2020

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