

B.A.No.100 of 2021

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 08TH DAY OF JANUARY 2021 / 18TH POUSHA, 1942

Bail Appl..No.100 OF 2021

CRIME NO.1/2019 OF VACB, ERNAKULAM , Ernakulam

PETITIONER:

V.K.EBRAHIM KUNJU  
AGED 68 YEARS  
RESIDENT OF PERIYAR CRESCENT, BY LANE-3, SIVA TEMPLE  
ROAD, THOTTAKATTUKARA, ALUVA, ERNAKULAM  
DISTRICT, PIN-683108

BY ADVS.

SRI.R.ANIL  
SRI.M.SUNILKUMAR  
SRI.SUJESH MENON V.B.  
SRI.T.ANIL KUMAR  
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)  
SRI.THOMAS SABU VADAKEKUT  
SHRI.MAHESH BHANU S.  
SMT.S.LAKSHMI SANKAR  
SHRI.RESSIL LONAN

RESPONDENT:

STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM  
PIN-682031

SR.ADV.SRI.B.RAMAN PILLAI FOR PETITIONER,  
SRI.K.V.SOHAN, STATE ATTORNEY

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
08.01.2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J**

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B.A.No.100 of 2021  
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Dated this the 8<sup>th</sup> day of January, 2021

**O R D E R**

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the 5<sup>th</sup> accused in VC No.1 of 2019, VACB, Ernakulam. The above case is registered against the petitioner and others alleging offences punishable under Sections 13(1) (d) r/w. Section 13(2) of the Prevention of Corruption Act and Section 120B IPC. This is the second bail application filed by the petitioner. The earlier bail application was dismissed by this Court as per order dated 14.12.2020 in B.A.No.8209 of 2020.

3. Admittedly, the petitioner is in custody from 18.11.2020. After hearing both sides in detail, this Court rejected the earlier bail application on 14.12.2020. The relevant portion of the order is extracted hereunder.

“ The petitioner was admitted to a hospital of his choice on 17.11.2020. He was arrested

on 18.11.2020. He is now treated by a doctor of his choice. He is now in hospital. Let the treatment continue. Once the treatment is over, and the doctors suggest that he can be discharged, he will be removed to jail. At that stage, the petitioner can file a bail application. At that stage, the bail application can be considered on merit also if necessary. The contention raised by the petitioner based on the first proviso to section 437(1) Cr.P.C is left open. A person who admitted to a hospital one day before the arrest and that also a hospital of his choice and he is being treated by a doctor of his choice is not entitled the benefit the first proviso to section 437(1) Cr.P.C, especially when the treatment is going on. Therefore, in my opinion, on medical ground also the petitioner is not entitled bail at this stage. Once the petitioner is removed to the jail from the hospital, after improving his clinical and hematological parameters as opined by the medical board, the petitioner is free to move a fresh bail application. This will take care of the prosecution's apprehension that he will influence the witness once he is released on bail".

4. The present petition is filed by the petitioner stating that there is change of circumstances. There is specific pleading in ground (H) of the bail application which is extracted hereunder:

(H). It is submitted that "multiple myeloma", is a medical condition of cancer of plasma cells affecting the bone marrow, with renal failure and presently he is in the most advanced and terminal stage viz Stage-III. It is an incurable disease. He has been undergoing treatment, at the hospital since April 2020. A certificate dtd 15.12.2020 issued by Dr.V.P.Gangadharan, HOD, Medical Oncology of Lakeshore Hospital showing the present condition of the petitioner and the plan of changing the mode of chemotherapy due to the progression of the disease, is produced herewith and marked as Annexure-11. The petitioner has been undergoing chemotherapy at regular intervals as part of his treatment. The progression of disease inspite of chemotherapy is alarming and the cancerous cells have damaged the immune system and bones and caused a crack on the spine. From the last week onwards the duration and number of chemotherapy procedure which was being done once in two weeks is now increased to twice in a week. To start with it was once in a week. But when the petitioner's condition improved it was reduced to as once in two weeks. Now the condition is dangerously deteriorated which compelled the doctors to increase the number to twice in a week with heavy and more strong medicine. It is submitted that the petitioner cannot be subjected to Chemotherapy on certain occasion due to low blood count. As the patient will be highly prone to various infection it would be dangerous and risky especially when there is wide spread of Corona-19 pandemic to send the petitioner to jail."

5. It is specifically stated in the bail application that, there is no improvement to the condition of the petitioner and it is dangerously deteriorated. Annexure-11 is the certificate dated 15.12.2020 issued by the doctor who is treating the petitioner.

The contents in Annexure-11 is extracted hereunder:

“Mr.Ebrahim Kunju V.K, M.L.A, 68 Y/M, ID:No.19632, is a case of multiple myeloma, stage 3 with extensive spinal involvement and neurological deficit (weak left hand grip). His disease is not curable. He has guarded prognosis with regards to the disease. In view of disease progression on current line of therapy, he is being planned for change of chemotherapy and surgical intervention.

This letter is issued at the request of his son Mr.Anoob V.E official purposes. Kindly do the needful.”

6. When this bail application came up for consideration on 6.1.2021, the State Attorney who appeared for the respondent submitted that the petitioner filed an application before the lower court for submitting a nomination for the General Election to the Administrative Committee of the Kerala Muslim Educational Society to be held on 16.1.2021. A statement was also filed to that effect before this Court. The counsel for the

petitioner submitted that he want to file an objection to that statement. Accordingly, the case is posted today. Today, the petitioner filed a statement of objection in which it is stated that he already filed an application before the Court below for withdrawing the same and that application is already withdrawn as per Annexure-15 order. The counsel also submitted that Annexure-13 is another Medical Certificate issued by the doctor on 7.1.2021 and in that it is stated that there is a worsening trend in the health condition of the petitioner. The contents in Annexure-13 is extracted hereunder:

“Dr.V.P.Gangadharan  
MD(Med) MD(Radiotherapy) DM(Oncology)  
HOD-Medical & Pediatric Oncology

Jan 7, 2021

TO WHOMSOEVER IT MAY CONCERN

“Mr.Ebrahim Kunju V.K, M.L.A, 68 Y/M,  
ID:No:19632, is a diagnosed case of multiple  
myeloma, stage 3 kappa disease with multiple  
bone lesions-C7 compression fracture with  
retropulsion and radicular neuropathy, type 2  
diabetes mellitus, systemic hypertension, old

coronary artery disease, s/p PTCA, benign prostatic hyperplasia and obstructive sleep apnea. He underwent radiation to cervical spine and started on treatment with Borte-Dexa, post 16 doses, Lenalidomide is added. After 24 doses of Borte-Dexa and 8 doses of Lenalidomide reassessment bone marrow is done which is showing residual disease. Then patient is started on Bortezomib maintenance, last dose on 03.12.2020. Patient has left upper limb pain and numbness and worsening weakness in left hand grip. He was seen by Neurosurgery, advised for intervention. However patient was not keen at present.

Patient had neutropenia for which he was receiving neutropenic care. Serum protein electrophoresis and FLC report as showing worsening trend. Patient is on Carfilzomib-Dexa S/P Ist cycle D15 injection on 6.1.2021. Chemoport insertion under Head & Neck Oncology done on 5/1/2021.

This letter is issued as requested by patient's son. Kindly do the needful.

SD/-

DR.V.P.GANGADHARAN MDMD DM  
MEDICAL & PAEDIATRIC ONCOLOGIST"

7. This Court dismissed the bail application earlier with an observation that the petitioner can file a fresh petition for bail once he is removed from the hospital to the jail. After

dismissal of the earlier petition, there is admittedly a change of circumstance as far as the health condition of the petitioner is concerned. As far as the contents in ground (H) of the bail application and the certificates produced by the petitioner, the State Attorney submitted that there is no dispute on that. If that is the case, I think the petitioner can be released on medical ground with stringent conditions. There can be a direction that the petitioner shall not leave the jurisdictional limit of Ernakulam district along with other conditions.

8. Therefore, this Bail Application is allowed with the following directions:

1. Petitioner shall be released on bail on executing a bond for Rs.2,00,000/- (Rupees Two lakhs only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

2. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner 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.

3. Petitioner shall not leave India without permission of the jurisdictional Court.

4. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

5. 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.

6. The petitioner shall not leave the jurisdictional limit of Ernakulam district without

permission of the Court below.

7. The petitioner shall surrender his passport before the Court below.

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**