

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

Bail Appl..No. 8867 of 2014

CRIME NO. 1840/2014 OF VADAKKANCHERRY POLICE STATION, PALAKKAD DISTRICT

PETITIONER(S)/ACCUSED NO.2:-:

**K.J.GEORGE, AGED 75 YEARS,
S/O.JOSEPH, KUNNATH HOUSE, KORANCHIRA P.O.,
PANAMKUTTY, KIZHAKKENCHERRY, PALAKKAD.**

**BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P**

RESPONDENT(S)/COMPLAINANT/STATE :

**STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
VADAKKENCHERRY POLICE STATION, PALAKKAD DISTRICT,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.SREEJITH.V.S

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 21-01-2015, ALONG WITH B.A.NO. 8874 OF 2014, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:**

Msd.

B.KEMAL PASHA, J.

=====

B.A. Nos. 8867 & 8874 of 2014

=====

Dated this the 21st day of January, 2015

ORDER

Petitions filed under Section 438 Cr.P.C.

2. Petitioner in B.A.No.8874 of 2014 is A1 and the petitioner in B.A.No.8867 of 2014 is A2 in Crime No.1840 of 2014 of the Vadakkenchery Police Station, registered for the offences punishable under Rule 113 read with Section 9 B (b) of the Explosive Act, 1884 and Section 5 of the Explosive Substances Act, 1908.

3. The prosecution case is that on 25.11.2014 at 04.15 p.m., the investigating officer conducted a search at the landed property of A2, on information that unlawful quarrying works were being conducted by A1 in the property. When the investigating officer reached the property, he could see a man running away from the property. On search, he could recover

19 Electric Detonators, 10 Gelatin sticks, 1 Dynamo Box and 25 meters of Service Wire. A tipper mini lorry bearing registration No.KL-13-S-3064 was also lying there.

4. Heard learned Senior Counsel for the 1st accused, the learned counsel for the 2nd accused and learned Public Prosecutor.

5. The contents of the CD reveal that the said contraband items, which are explosive substances, were seized and recovered from the property in the possession of the 2nd accused. Even though the learned counsel for the 2nd accused has got a case that the property was leased out to the 1st accused, no such documents are available. Even the prosecution has got a case that the explosive substances so recovered were kept in the property for illegal quarrying in the property and not for any other object. At the same time, the burden is on the part of the 2nd accused to show that it was being possessed for any lawful object within the meaning of Section 5 of the Explosive Substances Act, 1908. It is

doubtful whether the unlawful object mentioned in Section 5 of the Explosive Substances Act, 1908, will carry quarrying works without licence. At the same time, the 2nd accused has no case that he was keeping the explosive substances for quarrying works.

6. As far as the 1st accused is concerned, there is nothing to show that the 1st accused was conducting quarrying works in the property of the 2nd accused. The 1st accused has not obtained any licence for quarrying. Admittedly, the property does not belong to the 1st accused. Matters being so this is a fit case wherein anticipatory bail can be granted to the 1st accused. At the same time, considering the seriousness of the allegations against the 2nd accused, this is not a fit case wherein anticipatory bail can be granted to the 2nd accused.

7. The learned counsel for the 2nd accused has pointed out that the 2nd accused is a person, who is 74 years old and is sick. Even the prosecution has no case that the 2nd

accused is conducting any quarrying. Considering those aspects, I am of the view that this is a fit case wherein an opportunity can be granted to the 2nd accused to surrender before the investigating officer in order to co-operate with the investigation.

In the result, B.A.No.8874 of 2014 is allowed and the investigating officer or such other police officer, who is conducting the arrest of the 1st accused, is directed to enlarge the 1st accused on bail in the event of his arrest on his executing a bond for ₹25,000/- (Rupees twenty five thousand only) with two solvent sureties for the like sum each to the satisfaction of the officer conducting arrest, and subject to the following terms and conditions:-

- (i) The 1st accused shall report before the investigating officer in between 09.00 a.m. and 11.00 a.m. on all Wednesdays and Saturdays commencing from 28.01.2015 for a period of three months or till the filing of the final report in this

case, whichever is earlier.

(ii) The 1st accused shall not tamper with the evidence or influence witnesses.

(iii) The 1st accused shall make himself available for interrogation as and when required by the investigating officer.

(iv) The 1st accused shall not involve in any offence while on bail.

It is made clear that the violation of any of the conditions stipulated above will result in the cancellation of bail.

Where as, B.A.No.8867 of 2014 is dismissed. At the same time, if so advised, the 2nd accused may surrender before the investigating officer within ten days from today and in such case, the investigating officer can interrogate the 2nd accused, effect recovery if any, and conduct the investigation and produce the 2nd accused without delay before the concerned Judicial First Class Magistrate's Court, where the 2nd accused can move for bail. In such case, the learned

Magistrate shall pass appropriate orders, preferably on the same day itself, provided advance notice on such application has been given to the Assistant Public Prosecutor also.

Sd/-
B.KEMAL PASHA
JUDGE

DSV/21/1/15

// True Copy //

P.A. To Judge