

Dinesh Kumar Vs. State of Kerala

Dinesh Kumar Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1165748

Court : Kerala

Decided On : Oct-09-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Dinesh Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE 9TH DAY OF OCTOBER 2014 17TH ASWINA, 1936 Bail Appl..No. 6862 of 2014 () ----- CRIME NO. 1329/2014 OF CHERPU POLICE STATION , TRISSUR PETITIONER(S)/ACCUSED: ----- 1. DINESH KUMAR @ DINESH, AGED 35 YEARS S/O.KANDAN, KALLIYATH HOUSE, CHEVOOR VILLAGE VALLUKUNNATHSSERY DESOM, THRISSUR TALUK.

2. SALEESH K.S., AGED 32 YEARS S/O.SAGARAN, KOTILAPPARA HOUSE, CHEVOOR VILLAGE GALLUKUNNATHSSERY DESOM, THRISSUR TALUK. BY ADVS.SRI.K.RAMAKUMAR (SR.) SRI.S.M.PRASANTH SMT.ASHA BABU SMT.AMMU CHARLES RESPONDENT(S)/STATE & COMPLAINANT: ----- 1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM-682031.

2. THE SUB INSPECTOR OF POLICE CHERPU POLICE STATION, CHERPU, THRISSUR-680561. BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: d/k K. RAMAKRISHNAN, J.

..... B.A.No.6862 of 2014
..... Dated this the 9th day of October, 2014.

ORDER

This is an application filed by the second and fifth accused in Crime No.1329/2014 of Cherpu police station for anticipatory bail under Section 438 of the Code of Criminal Procedure.

2. The case of the prosecution in nutshell was that on 10.8.2014 at about 7.40 p.m the petitioners and other accused persons formed themselves into an unlawful assembly with an intention to attack Baiju, the injured, came near Manavumcode temple and they have inflicted injuries on said Baiju with dangerous weapons and thereby all of them have committed the offences punishable under Sections 143, 147, 148, 341, 323, 324 and 307 read with Section 149 of the Indian Penal Code.

3. The counsel for the petitioners submitted that the petitioners have not committed any offence and they are innocent of the same and in fact there was enmity between two groups of persons in connection with temple administration and there were number of cases registered in respect of the same. Further they were against the dumping of waste in a B.A.No.6862 of 2014 2 particular place causing nuisance to the public and the injured had disrupted that agitation and on account of that enmity, they have been falsely implicated in the case. Further, a reading of the First Information Statement will go to show that it is a manipulated and concocted one as it is very difficult to describe the overt act alleged in such a minute manner. Further, custody of the petitioners is not required. So he prayed for allowing the application.

4. The application was opposed by the Public Prosecutor on the ground that investigation is not over and none of the accused persons were arrested and weapons alleged to have been used for the commission of the offence have not been recovered.

5. Heard both sides and perused the case diary file.

6. It is seen from the case diary file that the case was registered on the basis of the statement given by the alleged eye witness to the incident against five named persons including the present petitioners alleging commission of the offences under Sections 143, 147, 148, 341, 323, 324 and 307 read with Section 149 of the Indian Penal Code. Even as per the allegation, the accused and the defacto complainant belong to different B.A.No.6862 of 2014 3 parties having different political ideology and personal enmity also prevails between them. Merely because a detailed First Information Statement has been given by the defacto complainant itself is not a ground to doubt the genuineness of the prosecution case as submitted by the counsel for the petitioners at this stage. It is seen from the wound certificate that the injured sustained injury on the head and he was in the ICU and his statement could not be recorded and it was on that circumstance that the statement of the eye witness was recorded for the purpose of registering the crime. The investigation is still in progress. The weapon alleged to have been used for the commission of the offence have not been recovered so far. So considering the gravity of the offence and also the stage of the investigation and also considering the fact that the weapons alleged to have been used for the commission of the offence have to be recovered for which custodial interrogation of the accused is required, this Court feels that it is not a fit case to invoke the extra ordinary jurisdiction under Section 438 of the Code to grant anticipatory bail to the petitioners at this stage. But this will not prevent the petitioners from surrendering before the investigating officer and on such B.A.No.6862 of 2014 4 surrender, if the investigating officer after interrogation recording their arrest and producing them before the concerned Magistrate court and at that time on such production, if the petitioners move for regular bail, the Magistrate considering the bail application and disposing the same strictly in accordance with law. So the petitioners are not entitled to get anticipatory bail. The application is dismissed

with the above observations. Sd/- K. RAMAKRISHNAN, JUDGE. cl /true copy/ P.S
to Judge B.A.No.6862 of 2014 5

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com