

Nitheesh Ouseph vs State of Kerala

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Court : Kerala

Decided On : Jan-12-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./84/2024

Appellant : Nitheesh Ouseph

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS FRIDAY, THE 12TH DAY OF JANUARY 2024 / 22ND POUSHA, 1945 BAIL APPL. NO. 84 OF 2024 CRIME NO.1413/2023 OF THUMBA POLICE STATION, THIRUVANANTHAPURAM AGAINST THE ORDER IN CRMC 3387/2023 OF DISTRICT COURT & SESSIONS COURT, THIRUVANANTHAPURAM PETITIONER/ACCUSED: NITHEESH OUSEPH AGED 29 YEARS S/O OUSEPH, RESIDING AT NIMMI HOUSE, VALIYAVELI, POUNDKADAVU, ATTIPRA, THIRUVANANTHAPURAM, PIN - 695583 BY ADVS. MITHUN P. MERIN THOMAS

RESPONDENT: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
OTHER PRESENT: SR PP SMT SEETHA S THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: B.A. NO.84 OF 2024 2 Dated this the 12th day of January, 2024

ORDER

The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the third accused in crime No.1413/2023 of the Thumba Police Station, Thiruvananthapuram, registered against the accused (3 in number) alleging them to have committed the offences punishable under Secs.294(b), 323, 324 and 308 read with Sec.34 of the Indian Penal Code. Sec.326 has been subsequently added in the above crime. The petitioner was arrested on 8.12.2023.

2. The prosecution case, in brief, is that: On

4.12.2023 at 00.45 hours, the accused in furtherance of their common intention of assaulting the informant, uttered obscene words and the first accused hit the informant with a ring box and the second accused hit him B.A. NO.84 OF 2024 3 with an iron bangle and the first accused attempted to inflict a cut injury on the informant, which he warded. Thus, the accused have committed the above offences.

3. Heard; Sri.Mithun Pavanan, the learned counsel appearing for the petitioner and Smt.Seetha.S, the learned Public Prosecutor appearing for the respondent.

4. The learned counsel for the petitioner submitted

that the petitioner is totally innocent of the accusations levelled against him. He has been falsely implicated in the crime. Even going by the prosecution case it was the first accused who inflicted the injury on the informant. The petitioner has been languishing in jail since 8.12.2023. The investigation in the case is practically complete as against the petitioner. The petitioners continued detention is unnecessary. Hence, the petitioner may be released on bail. B.A. NO.84 OF 2024

5. The learned Public Prosecutor vehemently

opposed the application. She made available the case diary. She contended that the injured sustained a fracture on his skull. The first accused is still at large. Letting off the petitioner at this stage may hamper the investigation. Hence, the application may be dismissed.

6. The prosecution case against the petitioner is

that he along with the first accused had inflicted injuries on the informant. Indisputably, it is the first accused who hit the injured with a ring box and attempted to inflict a cut injury. The petitioner has been in custody since 8.12.2023. The investigation, so far as it relates to the petitioner, is practically complete. Therefore, I am of the definite view that continued detention of the petitioner is unnecessary. Nonetheless, the petitioner is entitled to be enlarged on bail, but subject to stringent conditions. B.A. NO.84 OF 2024 5 In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

(i) The petitioner shall appear before the Investigating

Officer on every alternate Saturday between 9 a.m. and 11 a.m for a period of one month or till the final report is laid, whichever is earlier. And he shall also appear before the Investigating Officer as and when required;

(ii) The petitioner shall not directly or indirectly make

any inducement, threat or procure 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 or tamper with the evidence in any manner, B.A. NO.84 OF 2024 6 whatsoever;

(iii) The petitioner shall not commit any offence while he is on bail;

(iv) The petitioner shall surrender his passport, if any,

before the court below at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the court below on the date of execution of the bond;

(v) In case of violation of any of the conditions

mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

(vi) Applications for deletion/modification of the bail conditions shall be moved and entertained by the court below. B.A. NO.84 OF 2024 7

(vii) Needless to mention, it would be well within the

powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in Sushila Aggarwal v. State of Delhi and another [2020 (1) KHC 663]. Sd/- C.S.DIAS,
JUDGE rmm12/1/2024

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