

Rajeev vs State of Kerala

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Court : Kerala Orders

Decided On : Jan-30-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./103/2024

Appellant : Rajeev

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS TUESDAY,
THE 30TH DAY OF JANUARY 2024 / 10TH MAGHA, 1945 CRIME
NO.751/2023 OF KAREELAKULANGARA POLICE STATION,
ALAPPUZHA PETITIONER: RAJEEV AGED 37 YEARS RAJEEV
BHAVANAM ERAVA PATHIYOOR,ALAPPUZHA,KERALA, PIN - 690106
BY ADVS. AMAR S.R. R.KISHORE (KALLUMTHAZHAM)
RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 STATION
HOUSE OFFICER AGED 45 YEARS KAREELAKULANGARA POLICE
STATION,ALAPPUZHA, PIN - BY ADV SMT SEETHA S. - SENIOR
PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP

FOR ADMISSION ON 30.01.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

C.S.DIAS, J.

----- B.A.No. 103 of 2024
----- Dated this the 30th day of
January, 2024

ORDER

The application is filed under Section 438 of the Code of Criminal Procedure, 1973 (in short, Code), for an order of pre-arrest bail.

2. Petitioner is the sole accused in Crime

No.751/2023 of Kareelakulangara Police Station, Alappuzha, registered against the petitioner for allegedly committing the offences punishable under Sections 294(b) and 326 of the Indian Penal Code, 1860, (IPC, for short).

3. The gist of the prosecution case is that, on

16.12.2023 at around 21.30 hours, the accused attacked the defacto complainant/injured with a soda bottle and caused grievous injuries to him. Thus, the accused has committed the above offences.

4. Heard; Sri. Amar S. R., the learned counsel appearing for the petitioner and Smt. Seetha S., the learned Public Prosecutor appearing for the respondents.

5. The learned counsel appearing for the petitioner

submitted that petitioner is falsely implicated in the case and is totally innocent of the accusations levelled against him. In fact, the defacto complainant had erected an unauthorised shop in the petitioners property, regarding which the petitioner complained to the Panchayat authorities. This is to wreck vengeance on the petitioner in view of the said complaint, that the defacto complainant attacked the petitioner. The petitioner has also sustained injuries in the attack. At any rate, the

offence under Section 326 IPC will not be attracted. The petitioner has no criminal antecedents. The petitioner is willing to co-operate with the investigation officer and abide by any stringent condition that may be imposed by this Court. Hence, the application may be allowed.

6. The learned Public Prosecutor opposed the

application. She contended that the petitioner had brutally assaulted the defacto complainant and caused grievous injuries to him. She made available that the case diary and the accident register cum wound certificate, dated 16.12.2023 to establish the fracture sustained by the defacto complainant on the 5th metacarpal. She submitted that the investigation is in progress. The petitioners custodial interrogation is necessary and recovery is to be effected. If the petitioner is granted an order of pre-arrest bail, it would hamper with the investigation. Hence, the application may be dismissed.

7. The learned counsel appearing for the defacto complainant also opposed the application and reiterated the submissions of the learned Public Prosecutor.

8. In *Siddharam Satlingappa Mhetre v. State of Maharashtra* [(2011) 1 SCC 694] the Honble Supreme Court has held as follows:

111. No inflexible guidelines or straitjacket

formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in *Sibbia* case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 Cr PC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any

event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can

be taken into consideration while dealing with the anticipatory bail: (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire

available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern; (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be

considered and it is only the element of genuineness that shall 2024:KER:4965 B.A.No.11403 of 2023 -:7:- have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an

order of bail.

126. We deem it appropriate to reiterate and

assert that discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 Cr PC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

9. After bestowing my anxious consideration to the

materials placed on record, particularly taking into account the nature, gravity and the seriousness of the offences alleged against the petitioner, that the investigation of the case is in progress, that the custodial interrogation of the petitioners is necessary and the recovery is to be effected, I am of the definite view that the petitioner is not entitled to invoke the extra ordinary jurisdiction of this Court under Sec.438 of the Code. Therefore, I hold that this is not a fit case to grant an

order of pre-arrest bail. Consequently, the bail

application is dismissed.

10. Nonetheless, I direct that, if the petitioner

surrenders before the Investigating Officer within 10 days from today, he shall be interrogated and, thereafter, be produced before the jurisdictional Court on the date of surrender itself. Then, if the petitioner moves an application for bail, the jurisdictional Court shall, untrammelled by any observations in this order, consider the bail application on its merits and as expeditiously as possible. If the petitioner does not surrender before the Investigating Officer as directed above, the Investigating

Officer shall be free to arrest the petitioner as if no order

has been passed in this case. Sd/- C.S. DIAS JUDGE BR APPENDIX OF BAIL APPL. 103/2024 PETITIONERS ANNEXURES Annexure A 1 THE TRUE COPY OF THE FIR NUMBERED AS 751/2023 DATED 17.12.2023 RESPONDENTS ANNEXURES: NIL

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