

Prasad E.G vs State of Kerala

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Court : Kerala

Decided On : Mar-07-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./1629/2024

Appellant : Prasad E.G

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY, THE 7TH DAY OF MARCH 2024 / 17TH PHALGUNA, 1945 BAIL APPL. NO. 1629 OF 2024 CRIME NO.139/2024 OF Karimkunnam Police Station, Idukki PETITIONER/S: 1 PRASAD E.G AGED 36 YEARS EDATHUPADIYIL (H), KURINJI KARA, PURAPPUZHA VILLAGE, THODUPUZHA TALUK,, PIN - 686576 2 BEN BENNY AGED 24 YEARS AZHAKATH (H), KURINJI KARA, PURAPPUZHA VILLAGE, THODUPUZHA TALUK, PIN - 686576 BY ADVS. TOM JOSE (PADINJAREKARA) SUNNY JOSEPH K.T.SEBASTIAN

RESPONDENT/S: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 OTHER PRESENT:

PP Smt Shynimol V.O THIS BAIL APPLICATION HAVING COME UP FOR
ADMISSION ON 07.03.2024, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING: C.S.DIAS,J =====
----- Dated this the 7th day of March, 2024

ORDER

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

2. The petitioners are the accused 1 and 3 in Crime

No.139/2024 of the Karimkunnamm Police Station, Idukki, registered against the accused (three in number) for allegedly committing the offences punishable under Sections 294(b), 323, 324, 326 read with Sec.34 of the Indian Penal Code, 1860, (IPC, for short).

3. The concise case of the prosecution is that: on

11.2.2024 at around 18.00 hours, the accused in furtherance of their common intention, abused the de facto complainant and the third accused hit him with a stone on his right hip and the first accused hit him with a beer bottle on his right elbow by causing a fracture on his right knee bone and other injuries on his body. The second accused kicked him on the ground and assaulted him. Thus, the accused have committed the above offences.

4. Heard; Sri. Tom Jose Padinjarekara, the learned counsel appearing for the petitioners and Smt.Shynimole V.O, the learned Public Prosecutor appearing for the respondent.

5. The learned counsel for the petitioners vehemently

argued that the petitioners are totally innocent of the accusations levelled against them. They have been falsely implicated in the crime. In fact, there is a counter case registered at the instance of the petitioners against the de facto complainant. Annexure -2 FIR shows that in relation to the very same incident, the second

accused has also got injured. The second accused was treated at the Idukki District Hospital, which is evidenced by Annexure A4 accident register cum wound certificate. The second accused has already been released on bail. The investigation in the case is practically complete and recovery has been effected. Therefore, the petitioners custodial interrogation is not necessary. Hence, the application may be allowed.

6. The learned Public Prosecutor seriously opposed the

application. She made available the accident register cum wound certificate of the de facto complainant dated 11.2.2024 registered at 8.25 p.m and also the treatment records of the injured issued by the Karuna Hospital, Thodupuzha, principally to substantiate the assertion that the de facto complainant had suffered a chip fracture on the right forearm and also a deep wound of 2x2 cm. She submitted that the petitioners/accused 1 and 3 had inflicted serious injuries on the de facto complainant with a beer bottle and a stone. The investigation in the case is at its nascent stage, the recovery is to be effected and the petitioners custodial interrogation is

absolutely imperative. If the petitioners are granted an order

of pre-arrest bail, it would sabotage the investigation. Hence, the application may be dismissed.

7. The prosecution allegation against the

petitioners/accused 1 and 3 is that they inflicted serious injuries including a fracture on the de facto complainant by using a beer bottle and a stone. Admittedly, the petitioners interrogation is not complete and recovery is to be effected.

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 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. In *Jai Prakash Singh v. State of Bihar and another*, [(2012) 4 SCC 379] the Honble Supreme Court has

held that, an order of pre-arrest bail being an extra ordinary

privilege, should be granted only in exceptional cases. The judicial discretion conferred upon the Courts has to be properly exercised, after proper application of mind, to decide whether it is a fit case to grant an order of pre-arrest bail. The court has to be prima facie satisfied that the applicant has been falsely enroled in the crime and his liberty is being misused.

10. After bestowing my anxious consideration to the

facts, the materials placed on record, the rival submission made across the Bar, particularly the accident register cum wound certificate of the de facto complainant, that the investigation in the case is at its nascent stage, that the custodial interrogation of the petitioners is necessary and that the recovery is to be effected, I am convinced that the petitioners have not made out exceptional grounds 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.

11. Nonetheless, I direct that, if the petitioners surrender

before the Investigating Officer within 10 days from today, they shall be interrogated and, thereafter, be produced before the jurisdictional Court on the date of surrender itself. Then, if the petitioners move 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 petitioners do not surrender before the Investigating Officer as directed above, the Investigating Officer shall be free to arrest the petitioners as if no order has been passed in this case. sd/- C.S.DIAS,JUDGE Sks/7.3.2024