

Ashwin vs State of Kerala

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Court : Kerala

Decided On : Apr-03-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./2458/2024

Appellant : Ashwin

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY, THE 3RD DAY OF APRIL 2024 / 14TH CHAITHRA, 1946 CRIME NO.25/2024 OF Idukki Police Station, Idukki PETITIONER/S: ASHWIN AGED 19 YEARS ASHWIN S/O SANEESH, AGED 19 YEARS LAKSHMI VILASAM, GANDINAGAR COLONY , IDUKKI COLONY P.O, IDUKKI., PIN - BY ADVS. FRANCIS ASSISI T.D.ROBIN AJEESH S.BRITE LINU G. NATH AMRUTHA P S MANJU LUCKOSE RESPONDENT/S: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 OTHER PRESENT: SR PP SRI C S HRITHWIK THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03.04.2024, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING:

ORDER

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

2. The petitioner is the 5th accused in Crime

No.25/2024 of the Idukki Police Station, Idukki, registered against the accused (five in number), for allegedly committing the offences punishable under Sections 143, 145, 147, 294(b), 323, 332, 353 and 506(i) r/w Section 149 of the Indian Penal Code.

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

16.01.2024 at around 12.15 hours, while the defacto complainant, the Sub Inspector of Murickassery Police Station, was discharging his duty to disburse an unlawful assembly, the accused ten in number, out of their previous animosity with the defacto complainant, the 1 st accused hit the defacto complainant on his left side chest portion and uttered obscene words and the 2 nd accused kicked him on his left knee and caused him pain. The rest of the accused hurled abuses at the defacto complainant and other Police officers and deterred them from

discharging their official duty. Thus, the accused have committed the above offences.

4. Heard; Sri.Francis Assisi, the learned counsel appearing for the petitioner and Sri.C.S.Hrithwik, the learned Senior Public Prosecutor.

5. The learned counsel for the petitioner submitted

that the petitioner is totally innocent of the accusations leveled against him. A reading of Annexure A1 First Information Report would substantiate that the offences under Sections 332 and 353 of the IPC, the non-bailable offences, are only attracted against accused 1 and 2, who inflicted the injuries on the defacto complainant. The only accusation leveled against the petitioner is that he hurled

abuses at the defacto complainant and other Police officials. The said offence is bailable in nature. It is only because Section 149 of the IPC has been incorporated, the petitioner has been denied bail. The petitioner is a person without any criminal antecedents and is willing to

co-operate with the investigation. The petitioner's custodial interrogation is not necessary and no recovery is to be effected. Hence, the application may be allowed.

6. The learned Public Prosecutor opposed the

application. He submitted that accused 1 to 5 in prosecution of their common intention had formed an unlawful assembly and the accused 1 and 2 had assaulted the defacto complainant by hitting him on his chest and left knee. He made available the accident register cum wound certificate of the defacto complainant and other Civil Police Officer to show the nature of injuries suffered by them. He stated that the petitioner's custodial interrogation is necessary for the proper and full investigation of the crime. Hence, the application may be dismissed.

7. On an analysis of the materials on record, it can

be gathered that it was the accused 1 and 2 who inflicted the injuries on the defacto complainant and the Civil Police Officer. The accident register cum wound certificates show that the defacto complainant and the Civil Police Officer had suffered contusions and tenderness on the different parts of their body. However, there is no specific overt act alleged against the petitioner in Annexure A1 FIR, so as to attract the offences under Sections 332 and 353 of the IPC. Thus, I am of the view that the petitioner's custodial interrogation is not necessary and no recovery is to be effected. Hence, I hold that the petitioner is entitled for an order of pre-arrest bail subject to the condition that he co-operates with the investigation. In the result, the application is allowed subject to the following conditions: i) The petitioner is directed to surrender before the Investigating Officer within ten days from today. ii) In the event of the petitioner's arrest, the Investigating Officer shall produce him before the jurisdictional court on the date of surrender itself. iii) On

such production, the jurisdictional court shall release the petitioner on bail on him executing a bond for Rs.50,000/- (Rupees fifty thousand only), with two solvent sureties for the like amount each, to the satisfaction of the jurisdictional court;

(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) The petitioner shall co-operate with the investigation and make himself available for interrogation and for the purpose of investigation as and when the Investigating Officer directs; vi). The petitioner shall not intimidate the witnesses or interfere with the investigation in any manner; vii). The petitioner shall not get involved in any other offence while on bail. viii). 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. ix). Applications for deletion/modification of the bail conditions shall also be filed before the court below.

(x) 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 (NCT of Delhi)* and another [2020 (1) KHC 663]. sd/- C.S.DIAS
JUDGE rkc/03.04.24 APPENDIX OF BAIL APPL. 2458/2024 PETITIONER
ANNEXURES Annexure 1 TRUE COPY OF THE FIR DATED 16/01/2024 IN
CRIME NPO.25/2024 OF IDUKKI POLICE STATION Annexure 2 TRUE COPY OF
THE ORDER DATED 18/03/2024 IN CRL. M.C NO: 183/2024 OF HON'BLE
SESSIONS COURT THODUPUZHA

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