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Jayaprakash vs State of Kerala

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Court : Kerala

Decided On : Apr-23-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./2535/2024

Appellant : Jayaprakash

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS TUESDAY, THE 23RD DAY OF APRIL 2024 / 3RD VAISAKHA, 1946 BAIL APPL. NO. 2535 OF 2024 CRIME NO.306/2024 OF Aranmula Police Station, Pathanamthitta PETITIONERS/ACCUSED 1 AND 2: 1 JAYAPRAKASH AGED 43 YEARS S/O PRABHAKARAN NAIR, MURUPELL ADIMURIYIL, NARANGANAM P.O, PATHANAMTHITTA DISTRICT., PIN - 689642 2 RADHAKRISHNAN NAIR K V AGED 58 YEARS S/O VASUDEVAN NAIR, KAIPPANPLAVUNILKUNNATHIL HOUSE, NARANGANAM P.O, PATHANAMTHITTA DISTRICT., PIN - 689642 BY ADVS. T.K.BIJU (MANJINIKARA) ANNIE M.ABRAHAM KURIEN BIJU RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY PUBLIC

PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 SUB INSPECTOR OF POLICE ARANMULA POLICE STATION [CRIME NO.306/2024 OF ARANMULA POLICE STATION] PATHANAMTHITTA, PIN - 689533 OTHER PRESENT: SR PP C.S HRITHWIK THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

ORDER

Dated this the 23rd day of April, 2024 The application is filed under Section 438 of the Code of Criminal Procedure for an order of pre-arrest bail.

2. The petitioners are the accused 1 and 2 in Crime No.306 of 2024 of the Aranmula Police Station,

Pathanamthitta, registered against the accused for allegedly committing the offences punishable under Sections 143, 147, 148, 149, 341, 506, 323, 324, 326 and 427 of the Indian Penal Code.

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

08.03.2024, at around 19.30 hours, while the defacto complainant was returning to his house, the accused 4 to 7 intercepted the autorikshaw and dismantled the windscreen of the vehicle. Subsequently, the accused 4 and 5 assaulted the defacto complainant with square -:3:- tubes and he suffered a fracture on his hand and other injuries. The accused, 1 to 3 and 6 to 10, beat the defcto complainant with their hands. The defacto complainant also lost his mobile phone and suffered a loss of Rs.13,000/-. Thus, the accused have committed the above offences.

4. Heard; Sri.T.K. Biju, the learned counsel for the petitioners and C.S.Hrithwik, the learned Public Prosecutor

5. The learned counsel for the petitioners submitted that the petitioners are totally innocent of the

accusations levelled against them. A reading of Annexure A1 FIR would substantiate that the non- bailable offence under Section 326 can only be attracted against the accused 4 and 5, who inflicted the grievous injuries on the defacto complainant. The only overt act alleged against the petitioners is that they allegedly assaulted the defacto complainant with their hands. By

-:4:- no stretch of imagination, the offence under Section 326 will be attributed against the petitioners. Therefore, the petitioners' 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 the investigation in the case is in progress. He also stated that if the petitioners are granted an order of pre-arrest bail, it would hamper with the investigation. Hence, the application may be dismissed.

7. On an analysis of the materials, it can be

gathered that the specific overt act of committing grievous injuries on the defacto complainant is attributed against the accused 4 and 5, who hit the defacto complainant with square tubes and he suffered a fracture on his hands. The overt act alleged against the petitioners is that they allegedly assaulted the defacto -:5:- complainant with their hands.

8. On a prima facie appreciation of the materials

placed on record, I am of the definite view that the offence under Section 326 may not be attracted. However, there is a matter to be considered by the Investigating Officer. Thus, I hold that the petitioners have established sufficient grounds to invoke the extraordinary jurisdiction of this Court under Section 438 of the Code. Hence, I hold that the petitioners are entitled to an order of pre-arrest bail. In the result, the application is allowed subject to the following conditions: i) The petitioners are directed to surrender before the Investigating Officer within 10 days from today; ii) In the event of the petitioners arrest, the Investigating Officer shall release petitioners on bail on them executing a bond for Rs.50,000/- (Rupees fifty

thousand only) each with two solvent sureties for the like -:6:- amount each; iii) The petitioners shall appear before the Investigating Officer for interrogation, as and when directed by the Investigating Officer; iv) The petitioners 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, whatsoever: v). The petitioners shall surrender their passports before the court concerned within a period of one week from the date of their release on bail. If they have no passport, they shall file an affidavit to the effect before the said court within the said period;

(vi) The petitioners shall not get involved in any other offence while on bail. vii). In case of violation of any of the conditions -:7:-

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. viii). Applications for deletion/modification of the bail conditions shall also be filed before the court below. ix) 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 petitioners even while the petitioners are 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 mtk/23.04.24 -:8:- APPENDIX OF BAIL APPL. 2535/2024 PETITIONER ANNEXURES Annexure A1 THE TRUE COPY OF THE FIR IN CRIME NO Annexure A2 THE TRUE COPY OF THE FIR IN CRIME NO MANJITH Annexure A3 THE TRUE COPY OF THE FIR IN CRIME NO Annexure A4 THE TRUE COPY OF THE FIR IN CRIME NO. 642 /2021 Annexure A5 THE TRUE COPY OF THE DISCHARGE CARD DATED KOTTAYAM Annexure A6 TRUE COPY OF THE DISCHARGE CERTIFICATE DATED 03/01/2024 Annexure A7 THE TRUE COPY OF THE CERTIFICATE FROM THE MEDICAL COLLEGE HOSPITAL ALAPPUZHA DATED Annexure A8 THE TRUE COPY OF THE ORDER IN CRL

MISCELLANEOUS PETITION NO 1955/2024 PASSED BY THE HONORABLE SESSIONS COURT PATHANAMTHITTA DATED 21/03/2024

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