

**Anwar, vs State of Kerala,**

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**SooperKanoon Citation : [sooperkanoon.com/1325475](https://sooperkanoon.com/1325475)**

**Court : Kerala Orders**

**Decided On : Jun-10-2024**

**Judge : Honourable Mr.Justice C.S.Dias**

**Appeal No. : Bail Appl./4062/2024**

**Appellant : ANWAR,**

**Respondent : State of Kerala,**

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 10TH DAY OF JUNE 2024 / 20TH JYAISHTA, 1946 BAIL APPL. NO. 4096 OF 2024 CRIME NO.621/2024 OF Kayamkulam Police Station, Alappuzha PETITIONER/S: SHAMEER K ,AGED 33 YEARS C/O KUNJUMON, PUTHENPURAYIL PADEETTATHIL, KAYAMKULAM, ALAPPUZHA, PIN - 690502 BY ADVS. BASIL CHANDY VAVACHAN CHARUTHA BHAIJU CHANDHANA BHAIJU BASIL SAJAN FATHIM NAVAS KAVYA P.R. LEKSHMI PRIYA V. BASIL SCARIA RESPONDENT/S: 1 STATE OF KERALA,REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 \*2 ANAS,S/O ASHARAF, MANNASSERIL THARAYIL, ERUVA MURI, PATHIYOOR,

ALAPPUZHA

**[IMPLEADED AS THE ADDL. 2ND RESPONDENT AS PER ORDER**

DT.10.06.2024 IN CRL.M.A.NO.1/2024] BY ADVS. No Advocate GEORGIE SIMON OTHER PRESENT: SR PP SMT NEEMA T V THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10.06.2024, ALONG WITH Bail Appl..4062/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 10TH DAY OF JUNE 2024 / 20TH JYAISHTA, 1946 BAIL APPL. NO. 4062 OF 2024 CRIME NO.621/2024 OF Kayamkulam Police Station, Alappuzha PETITIONER/S: ANWAR, AGED 25 YEARS S/O NAZAR, EDAYILE HOUSE, KEERIKKAD VILLAGE, VERUVALLI BHAGOM MURIYIL, KAYAMKULAM, PIN - 690502 BY ADVS. BASIL CHANDY VAVACHAN CHARUTHA BHAIJU CHANDHANA BHAIJU BASIL SAJAN FATHIM NAVAS KAVYA P.R. LEKSHMI PRIYA V. BASIL SCARIA RESPONDENT/S: STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 SR.PP.SMT.SEETHA S. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10.06.2024, ALONG WITH Bail Appl..4096/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**COMMON ORDER**

The applications are filed under Section 439 of the Code of Criminal Procedure, 1973, by the accused 2 and 3 in Crime No.621/2024 of the Kayamkulam Police Station,

Alappuzha, registered against the accused (four in number) for allegedly committing the offences punishable under Sections 447 and 307 r/w Section 34 of the Indian Penal Code( in short, 'IPC'). The petitioners were arrested on 07.05.2024. B.A.No.4096/2024 is filed by the 2nd accused and B.A.No.4062/2024

is filed by the 3<sup>rd</sup> accused. Since the applications arise out of the same crime, they are consolidated, jointly heard and are being disposed of by this common order.

2. The prosecution case in brief is that: on

05.05.2024, at around 22 hours, the accused 1 to 4, in furtherance of their common intention to kill the defacto complainant, had forcefully entered the premises of the defacto complainant and the 3<sup>rd</sup> accused handed over a sword stick to the 1<sup>st</sup> accused, who repeatedly attacked the defacto complainant and caused injuries to the right side of his hand with an intention to kill him. Thus, the accused have committed the above offences.

3. Heard; Sri.Basil Chandy Vavachan, the learned counsel appearing for the petitioners, Smt.Neema T.V. and Smt.Seetha S., the learned Public Prosecutors and Sri.Georgei Simon, the learned counsel appearing for the additional 2<sup>nd</sup> respondent/defacto complainant.

4. The learned counsel for the petitioners submitted

that the petitioners are totally innocent of the accusations leveled against them. A reading of the Annexure-1 FIR would substantiate that it was the 1<sup>st</sup> accused who inflicted the serious injuries on the defacto complainant. The petitioners have been in judicial custody for the last more than one month, the investigation in the case is practically complete and recovery has been effected.

Moreover, the defacto complainant/additional 2<sup>nd</sup> respondent has sworn Annexure-3 affidavit stating that he has no subsisting grievance against the 2<sup>nd</sup> accused. Therefore, the subject matter in dispute between the 2<sup>nd</sup> respondent and the 2<sup>nd</sup> accused has been settled out of court. Hence, the applications may be allowed.

5. The learned Public Prosecutors opposed the

applications. They submitted that the investigation in the case is in progress. They also stated that the petitioners have committed a very serious offence under

Section 307 of the IPC. If the petitioners are released on bail, there is every likelihood of them intimidating the witnesses and tampering with the evidence. Hence, the applications may be dismissed.

6. The learned counsel for the defacto

complainant/additional 2nd respondent submitted that the additional 2nd respondent has sworn Annexure-3 affidavit stating that he does not propose to proceed against the 2nd accused, since the dispute between them has been amicably settled and he has voluntarily executed Annexure-3 affidavit on 08.05.2024.

7. The prosecution allegation is that, the accused in

furtherance of their common intention had wrongfully restrained the defacto complainant and the 1st accused assaulted him with a sword stick and he suffered grievous

injuries. Indisputably, the additional 2nd respondent/defacto complainant has stated that he does not want to prosecute the matter against the 2nd accused, who allegedly had previous animosity with the defacto complainant. The fact remains that the petitioners have been in judicial custody for the last more than one month, the investigation in the case is complete and recovery has been effected.

8. In *Dataram Singh v. State of U.P.*, [(2018) 3 SCC

22] the Honourable Supreme Court observed that grant of bail is a rule and putting a person in jail is an exception. Even though the grant of bail is entirely the discretion of the court, it has to be evaluated based on the facts and circumstances of each case and the discretion has to be exercised in a judicious and compassionate manner.

9. The principle that bail is the rule and jail is an

exception, which is on the touch stone of Article 21 of the Constitution of India. The right to bail cannot be denied merely due to the sentiments of the society.

10. On an anxious consideration of the facts, the rival

submissions made across the Bar, and the materials placed on record, and especially taking into account the fact that the petitioners have been in judicial custody for the last more than one month, that the investigation in the case is practically complete and recovery has been effected and moreover the subject matter in dispute between the defacto complainant and the 2nd accused has been

amicably settled out of court, I am of the definite view that the applications are only to be allowed. In the result, the applications are allowed, by directing the petitioners to be released on bail on them executing a bond for Rs.50,000/- (Rupees Fifty Thousand 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 petitioners shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is laid. They shall also appear before the Investigating Officer as and when required; ii. 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 them from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever; iii. The petitioners shall not commit any offence while they are on bail; iv. The petitioners shall surrender their passports, if any, before the court below at the time of execution of the bond. If they have no passports, they shall file affidavits 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 applications 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. 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 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

rkc/10.06.24 APPENDIX OF BAIL APPL. 4062/2024 PETITIONER ANNEXURES  
Annexure 1 THE TRUE COPY OF FIR IN CRIME NO. ALAPPUZHA Annexure 2  
THE TRUE COPY OF REMAND APPLICATION OF PETITIONER DATED  
08/05/2024 IN CRIME NO. ALAPPUZHA APPENDIX OF BAIL APPL. 4096/2024  
PETITIONER ANNEXURES Annexure 1 THE TRUE COPY OF FIR IN CRIME  
NO. ALAPPUZHA Annexure 2 THE TRUE COPY OF REMAND APPLICATION  
OF PETITIONER DATED 08/05/2024 IN CRIME NO. ALAPPUZHA Annexure 3  
THE ORIGINAL OF THE AFFIDAVIT OF THE DEFACTO COMPLAINANT

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