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Faisal, vs State of Kerala,

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Court : Kerala

Decided On : Jun-14-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./4195/2024

Appellant : Faisal,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS FRIDAY, THE 14TH DAY OF JUNE 2024 / 24TH JYAISHTA, 1946 BAIL APPL. NO. 4195 OF 2024 CRIME NO.511/2024 OF FORT POLICE STATION, THIRUVANANTHAPURAM PETITIONERS/ACCUSED: 1 FAISAL, AGED 30 YEARS TC. 39/2035,KARIMADOM COLONY, MANACAUD, MANACAUD P.O., THIRUVANANTHAPURAM, PIN - 695009 2 NIYAS, AGED 28 YEARS TC. 39/2035,KARIMADOM COLONY, MANACAUD, MANACAUD P.O., THIRUVANANTHAPURAM, PIN - 695009 3 SHAMEER, AGED 27 YEARS TC. 39/2035,KARIMADOM COLONY, MANACAUD, MANACAUD P.O., THIRUVANANTHAPURAM, PIN - 695009 BY ADV VISHNU S. RESPONDENT: STATE OF KERALA,

REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 BY SMT NEEMA T V SENIIOR PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14.06.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -:2:-

ORDER

Dated this the 14th day of June, 2024 The application is filed under Section 438 of the Code of Criminal Procedure, 1973, for an order of pre- arrest bail.

2. The petitioners are the accused 2 to 4 in Crime

No.511/2024 of the Palode Police Station, Thiruvananthapuram, registered against the accused for allegedly committing the offences punishable under Sections 294(b), 341, 323, 324 and 308 r/w Section 34 of the Indian Penal Code (in short, 'IPC').

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

08.04.2024, at around 19.45 hours, the accused 1, 2 and 4, in furtherance of their common intention, went in the authrikshaw of the third accused, and the first accused took away the key of the vehicle of the defacto complainant, wrongfully restrained him, and fisted him on his face. Then, the second accused hit on the head

-:3:- and nose of the defacto complainant with a helmet, and the accused 4 and 5 physically assaulted him. Thus, the accused have committed the above offences.

4. Heard; Sri.Vishnu.S, the learned counsel appearing for the petitioners and Smt.Neema. T.V., the learned Public Prosecutor.

5. The learned counsel for the petitioners submitted

that the petitioners are totally innocent of the accusations leveled against them. They have been falsely implicated in the crime. A reading of Annexure-A1 FIR would substantiate that the offence under Section 308 is not attracted to the facts

of the case. The said offence has been deliberately incorporated by the Investigating Officer to deny bail to the petitioners. The petitioners custodial interrogation is not necessary, and no recovery is to be effected. Hence, the petitioners are entitled to an

order of pre-arrest bail. Moreover, the Court of Session

has granted the first accused an order of pre-arrest bail as per Annexure A2 order. The petitioners claim parity -:4:- with the said accused.

6. The learned Public Prosecutor opposed the

application. She submitted that there is a specific overt act alleged against the first petitioner/second accused, who is a person who hit the defacto complainant on his head and nose and caused grievous injuries to him. She made available the treatment records of the defacto complainant to substantiate the nature of the injuries suffered by him. She also submitted that the first petitioner/second accuseds custodial interrogation is necessary and recovery is to be effected. Nonetheless, she did not dispute the fact that there is no specific overt act alleged against the petitioners 2 and 3/ accused 3 and 4, so as to attract the offence under Section 308 of the IPC.

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

be seen that there is a specific overt act alleged against the first petitioner/second accused, who has inflicted serious injuries on the head and nose of the defacto -:5:- complainant, which prima facie stands corroborated by the treatment certificate of the defacto complainant issued by the Taluk Hospital, dated 09.06.2024, by the Taluk Hospital Fort, Thiruvananthapuram. However, that is a matter to be investigated and decided at the time of the trial.

8. Recently, in Srikant Upadhyay v. State of Bihar

[2024 KHC OnLine 6137] the Hon'ble Supreme Court, after referring to a plethora of judgments on the powers under Section 438 of the Code has observed as follows:

8. It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under S.438, Cr PC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in HDFC Bank Ltd. v. J.J.Mannan & Anr., 2010 (1) SCC 679). xxx xxx xxxx xxx -:6:-

10. xxx xxx xxx

xxx xxx xxx xxx xxx xxx 24.We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. .. ...

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

held that an order of a pre-arrest bail is an extraordinary

privilege, which should be granted only in exceptional cases. The judicial discretion conferred upon the court -:7:- must be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail. The Court has to be prima facie satisfied that the accusation levelled against the applicant is only to enrope him in the crime and to misuse his liberty.

10. On an anxious consideration of the facts, the rival submissions made across the Bar, and the materials placed on record, especially on comprehending that the specific overt act is attributed against the first petitioner/second accused, the prima facie materials

establish his involvement in the crime, the first petitioners custodial interrogation is necessary, and recovery is to be effected, I am not inclined to exercise my discretionary power in favour of the first petitioner since he has not made out any exceptional ground to invoke the extraordinary jurisdiction of this Court under Section 438 of the Code. Hence, the application filed by the first petitioner is only to be dismissed. Nonetheless,

-:8:- since there is no specific overt act alleged against the petitioners 2 and 3/accused 3 and 4 so as to attract the offence under Section 308 of the IPC, I am inclined to allow the application. Resultantly:

(1) The application filed by the first petitioner/second accused is dismissed.

(ii) The application filed by the petitioners 2 and 3 / accused 3 and 4 is allowed, subject to the following conditions:

(i) The petitioners 2 and 3/ accused 3 and 4 are directed to surrender before the Investigating Officer within 10 days from today.

(ii) In the event of the petitioners 2 and 3/ accused 3

and 4s arrest, the Investigating Officer shall release them on bail on them executing a bond for Rs.50,000/- (Rupees fifty thousand only) each with two

solvent sureties for the like amount each;

(iii) The petitioners 2 and 3/ accused 3 and 4 shall appear before the Investigating Officer for interrogation, as and when directed by the -:9:- Investigating Officer;

(iv) The petitioners 2 and 3/ accused 3 and 4 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 2 and 3/ accused 3 and 4 shall

surrender their passports before the jurisdictional court concerned within a period of one week from the date of their release on bail. If they have no passport, they shall file affidavits to the effect before the said court within the said period;

(vi) The petitioners 2 and 3/ accused 3 and 4 shall not get involved in any other offence while on bail;

(vii) 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. (viii) Applications for deletion/modification of the bail -:10:- 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 2 and 3/ accused 3 and 4 even while they 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].

(x) The observations made in this order are only

for the purpose of considering the application and the same shall not be construed as an expression on the merits of the case to be decided by competent Courts. Sd/- C.S.DIAS,JUDGE mtk/14.06.24 The name of the Police Station mentioned in the second paragraph of the final order dated 14.06.2024 in B.A.No.4195/2024 stands corrected as Fort Police -:11:-

Station instead of Palode Police Station - vide order

dated 10.07.2024 in Crl.M.A.No.1/2024 in Bail Application No.4195/2024. Sd/- Joint Registrar

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