

Anatt, vs State of Kerala,

Anatt, vs State of Kerala,

SooperKanoon Citation : sooperkanoon.com/1328699

Court : Kerala Orders

Decided On : Aug-01-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./5913/2024

Appellant : ANATT,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY,
THE 1ST DAY OF AUGUST 2024 / 10TH SRAVANA, 1946 BAIL APPL.
NO. 5913 OF 2024 CRIME NO.1169/2024 OF CHERTHALA POLICE
STATION, ALAPPUZHA AGAINST THE ORDER DATED 27.06.2024 IN
CRMC NO.147 OF 2024 OF DISTRICT & SESSIONS COURT,
ALAPPUZHA PETITIONER/ACCUSED 1: ANATT, AGED 26 YEARS
S/O ANIYAPPAN, GANAPATHYVELI, VAYALAR.P.O, WARD, NO.5,
CHERTHALA, ALAPPUZHA DISTRICT, PIN - 688524 BY ADVS.
GAYATHRI MURALEEDHARAN ARATHY P. ARCHANA B.
RESPONDENT: STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 BY SMT

SEETHA S SENIOR PUBLIC PROSECUTOR THIS BAIL APPLICATION
HAVING COME UP FOR ADMISSION ON 01.08.2024, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING: B.A.No.5913 of 2024 -:2:-
Dated this the 24th day of July, 2024

ORDER

The application is filed under Section 482 of the

Bharatiya Nagarik Suraksha Sanhita, 2023, for an order

of pre-arrest bail.

2. The petitioner is the first accused in Crime

No.1169/2024 of the Cherthala Police Station, Alappuzha, which is registered against the four accused for allegedly committing the offences punishable under Sections 294(b), 341, 323, 324, 326 and 427 r/w Section 34 of the Indian Penal Code.

3. The gist of the prosecution case is that; on

29.05.2024, at around 21:15 hrs., the accused, in furtherance of their common intention, had wrongfully restrained the de facto complainant, and the first accused hit the de facto complainant on his face, and he suffered a nasal bone fracture. The accused 2 to 4 manhandled the de facto complainant. It is also alleged that the second accused hit the de facto complainant

B.A.No.5913 of 2024 -:3:- with a helmet. Thus, the accused have committed the above offences.

4. Heard; Smt.Gayathri Muraleedharan, the learned counsel appearing for the petitioner and Smt. Seetha.S., the learned Public Prosecutor.

5. The learned counsel for the petitioner

submitted that the petitioner is totally innocent of the accusations levelled against him. A reading of the FIR would show that the offence under Section 326 of the IPC is not attracted to the facts of the case. The Investigating Officer has deliberately incorporated the said offence to deny bail to the petitioner. The petitioner is a law-abiding citizen and does not have any criminal antecedents. The petitioner's custodial interrogation is not necessary, and no recovery is to be effected. Hence, the petitioner is entitled to an order of pre-arrest bail.

6. The learned Public Prosecutor opposed the application. She submitted that there is a specific overt act alleged against the petitioner, who had hit the B.A.No.5913 of 2024 -:4:-

defacato complainant on his face with his helmet and he suffered a nasal bone fracture. She stated that the petitioners custodial interrogation is necessary and recovery is to be effected. If the petitioner is granted an

order of pre-arrest bail, it would hamper the

investigation. Hence, the application may be dismissed.

7. The prosecution allegation against the

petitioner is that he hit the defacto complainant with a helmet, and he suffered a nasal bone fracture. The said accusation, prima facie, stands corroborated by the treatment record issued by the Taluk Head Quarters Hospital, Cherthala, dated 29.05.2024. However, that is a matter to be investigated and ultimately decided at the time of trial.

8. In Srikant Upadhyay v. State of Bihar [2024 KHC OnLine 6137] the Honourable Supreme Court, after referring to all the earlier decisions on the point, has observed in the following lines: 8. It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the B.A.No.5913 of 2024 -:5:-

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 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

B.A.No.5913 of 2024 :-6:- orders shall be passed in eminently fit cases. xxx xxx
xxx.

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 enroped in the crime and his liberty is being misused.

10. On an anxious consideration of the facts, the rival submissions made across the Bar and the materials placed on record, especially on finding that there are

prima facie materials to establish the petitioner's involvement in the crime, that the petitioner's custodial interrogation is necessary, and that the recovery is to be effected, I am not satisfied that the petitioner has made out any valid ground to invoke the discretionary B.A.No.5913 of 2024 -:7:- jurisdiction of this Court under Section 482 of the BNSS. Hence, I am not inclined to grant an order of pre-arrest bail. Consequently, the bail application is dismissed. Nonetheless, I direct that, if the petitioner surrenders before the Investigating Officer within a week from today, he shall be interrogated and, thereafter, be produced before the jurisdictional Court on the date of surrender itself. Then, if the petitioner moves an application for bail, the jurisdictional Court shall, consider the bail application on its merits. If the petitioner does not surrender before the Investigating Officer as directed above, the Investigating Officer shall be free to arrest the petitioner as if no order has been passed in this case. Sd/- C.S.DIAS,JUDGE mtk/01.08.24 //True copy//
To Judge

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com