

**Anas vs State of Kerala**

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**Court :** Kerala

**Decided On :** Aug-08-2024

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

**Appeal No. :** Bail Appl./6277/2024

**Appellant :** ANAS

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY,  
THE 8TH DAY OF AUGUST 2024 / 17TH SRAVANA, 1946 CRIME  
NO.495/2024 OF Pothanikadu Police Station, Ernakulam -----  
PETITIONERS/ACCUSED Nos.1 TO 4 :-

1 ANAS, AGED 38 YEARS SON OF IBRAHIM, VALAN HOUSE,  
AVOLICHAL KARA, NERIAMANGALAM VILLAGE, NOW RESIDING AT  
VELLARAMATTOM BHAGOM, PALLARIMANGALAM KARA,  
KOTHAMANGALAM, ERNAKULAM DISTRICT., PIN - 686 671 2 BINU  
BABY, AGED 37 YEARS S/O. BABY, THANNIVEETIL HOUSE,  
THENKOD BHAGOM, PAREEKKANNI KARA, KUTTAMANGALAM

VILLAGE, KOTHAMANGALAM, ERNAKULAM DISTRICT., PIN - 686 693 3 JANEESH, AGED 40 YEARS S/O. KRISHNANKUTTY, PLAMOOTTUPURACKAL HOUSE, MENTHAND BHAGOM, AVOLICHAL KARA, NERIAMANGALAM VILLAGE, KOTHAMANGALAM, ERNAKULAM DISTRICT., PIN - 686 693 4 JAIBY, AGED 45 YEARS S/O. JAMES, MELEKKUDY HOUSE, AVOLICHAL KARA, NERIAMANGALAM VILLAGE, KOTHAMANGALAM, ERNAKULAM DISTRICT., PIN - 686 693 BY ADV NIREESH MATHEW

RESPONDENT/COMPLAINANT :- STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 031 BY SMT.PUSHPALATHA, SR.PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -: 2 :-

## **ORDER**

Dated this the 8th day of August, 2024 The application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS', for short), by the accused 1 to 4 in Crime No.495/2024 of the

Pothanikadu Police Station, Ernakulam, which is registered against the four accused persons, for allegedly committing the offences punishable under Sections 109(1), 118(1), 126(2) and 296(b) r/w Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 ('BNS', for short). The third accused was arrested on 21.07.2024 and the accused 1, 2 and 4 had surrendered on 22.07.2024.

2. The essence of the prosecution case is that;

on 19.07.2024, at around 21:30 hrs., the accused in furtherance of their common intention to murder the de facto complainant, the first accused had uttered obscene words at the de facto complainant and the second accused hit him with an iron block on his head and cheek and when

-: 3 :- he fell down, the first accused kicked him and the second accused again hit him with an iron block on his head and he suffered grievous injuries. When the de facto complainant's friend attempted to rescue him, the accused 3 and 4 wrongfully restrained and assaulted him. Thus, the accused have committed the above offences.

3. Heard; Sri.Nireesh Mathew, the learned counsel appearing for the petitioners and Smt.Pushpalatha, the learned Senior Public Prosecutor.

4. The learned counsel appearing for the petitioners submitted that the petitioners are totally

innocent of the accusations levelled against them. The Investigating Officer has deliberately incorporated Section 109(1) of the BNS to see that the petitioners are arrested and incarcerated. There is no material to substantiate that the petitioners have committed the offence under Section 109(1) of the BNS. The petitioners have been in judicial custody for the last more than 15 days, the investigation in

-: 4 :- the case is practically complete and recovery has been effected. Furthermore, the petitioners do not have any criminal antecedents. Hence, the application may be allowed.

5. The learned Public Prosecutor seriously

opposed the application. She submitted that there is a specific overt act alleged against the second accused, who assaulted the de facto complainant with an iron block, and he suffered grievous injuries on his head. She made

available the accident register-cum-wound certificate dated 25.07.2024 of the de facto complainant issued by the Mar Baselios Medical Mission Hospital, Kothamangalam to substantiate the serious nature of injuries suffered by the de facto complainant. She stated that the investigation is in progress. If the petitioners are released on bail, there is every likelihood of them intimidating the witnesses and tampering with the evidence. Hence, the application may be dismissed.

-: 5 :-

6. On an evaluation of the materials placed on

record, it can be deciphered that it was the second accused who hit the de facto complainant with an iron block on his face and head, and he suffered serious injuries. The said fact prima facie stands corroborated by the accident register-cum-wound certificate referred to above. Whereas, the allegation against the first accused is that, he uttered obscene words at the de facto complainant and kicked him when he fell on the ground, and the accused 3 and 4 had assaulted the friend of the de facto complainant. Therefore, the allegation of committing the offence under Section 109(1) of the BNS stands attributed against the second accused, though that is a matter to be investigated and ultimately decided at the time of trial.

7. In Sanjay Chandra v. CBI [2012 1 SCC

**40], the Honourable Supreme Court has categorically held**

that the fundamental postulate of criminal jurisprudence is the presumption of innocence, until a person is found -: 6 :- guilty. Any imprisonment prior to conviction is to be considered as punitive and it would be improper on the part of the Court to refuse bail solely on the ground of former conduct.

8. In Dataram Singh v. State of U.P. [(2018)

3 SCC 22] the Honourable Supreme Court observed that grant of bail is the 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. On an overall consideration of the facts, the

rival submissions made across the Bar and the materials placed on record, particularly on considering the fact that the specific overt act is alleged against the second accused of committing the serious offence under Section 109(1), which

prima facie stands corroborated by the accident -: 7 :-

register-cum-wound certificate referred to above, I am of the firm view that the second accused is not entitled to be enlarged on bail at this stage. On the contrary, since there is no specific overt act alleged against accused 1, 3 and 4 to have committed the offence under Section 109(1) of the BNS, I am convinced that the said accused can be enlarged on bail.

In the result,

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

(2) The application filed by the petitioners 1, 3

and 4/accused 1, 3 and 4 is allowed, by directing the petitioners 1, 3 and 4 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 :-

-: 8 :-

(i) The petitioners 1, 3 and 4 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 1, 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 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 1, 3 and 4 shall not commit any offence while they are on bail;

(iv) The petitioners 1, 3 and 4 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 application for -: 9 :- 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 filed and entertained before 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 1, 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]. Sd/- C.S. DIAS, JUDGE

Jvt/8.8.2024 -: 10 :- APPENDIX OF BAIL APPL. 6277/2024 PETITIONER ANNEXURES :- Annexure 1 TRUE PHOTO COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 495/2024 OF POTHANIKKAD POLICE STATION DATED 20.07.2024 Annexure 2 TRUE PHOTO COPY OF THE REMAND REPORT IN CRIME NO. 22.07.2024 Annexure 3 FREE COPY OF THE ORDER PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOTHAMANGALAM IN C.M.P. NO. 1764/2024 DATED 23.07.2024

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