

Noushad vs State of Kerala

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Court : Kerala Orders

Decided On : Feb-21-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./216/2023

Appellant : Noushad

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
TUESDAY, THE 21ST DAY OF FEBRUARY 2023 / 2ND PHALGUNA,
BAIL APPL. NO. 216 OF 2023 CRIME NO.678/2020 OF OTTAPPALAM
POLICE STATION, PALAKKAD PETITIONER/ACCUSED NO.7:
NOUSHAD AGED 40 YEARS S/O. MOIDU, THARAYIL HOUSE,
AMBALAVATTAM, PANAMANNA, OTTAPPALAM, PALAKKAD- 679501.
BY ADVS. SUNNY MATHEW NIKITTA TRESSY GEORGE
RESPONDENTS/COMPLAINANTS & STATE : 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, COCHIN - 682 031 2 THE STATION HOUSE
OFFICER OTTAPPALAM POLICE STATION, PALAKKAD DISTRICT-

679101 BY SRI.P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC PROSECUTOR SRI.P G MANU, SR.PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 10.02.2023, THE COURT ON 21.02.2023 DELIVERED THE FOLLOWING:
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A.BADHARUDEEN, J.

===== B.A.No.216 of 2023
===== Dated this the 21st day of
February, 2023

ORDER

This is an application for regular bail filed by accused No.7 in Crime No.678/2020 of Ottappalam Police Station.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor.

3. The prosecution allegation is that at about 22.00

hours on 31.05.2020, the accused herein formed into unlawful assembly armed with deadly weapons with knowledge that they are all members of the said assembly with intention to murder the defacto complainant and his brother Vinod, due to previous animosity. Thereafter, the 7th accused restrained the defacto complainant, who was coming on a motor cycle. Subsequently, accused Nos.1, 3 and 10

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assaulted the defacto complainant with sword and accused Nos.2, 4 and 8 assaulted the defacto complainant by using iron pipes. Thereafter all the accused assaulted the defacto complainant. When the brother of the defacto complainant Vinod reached the place of occurrence, the 2 nd accused beat on his head with an iron pipe. When Vinod fell down, the 1 st accused cut him with a sword. The 3rd

accused cut his hand with a sword. Accused Nos.5, 6 and 11, beat and kicked on his head, left hand and both legs. As a result of the same, on 22.06.2020, Vinod succumbed to death. On this premise, the prosecution alleges commission of offences punishable under Sections 143, 144, 147, 148, 341, 323, 324, 307 and 302 r/w 149 of the Indian Penal Code.

4. It is argued by the learned counsel for the

petitioner that the petitioner is innocent and the allegation against the petitioner is that he had wrongfully restrained the defacto complainant and further he assaulted the defacto B.A.No.216/2023 4 complainant. There is no allegation on the part of the prosecution against the 7th accused in the matter of murder of Vinod. It is submitted that the petitioner/7 th accused has been in custody since 25.10.2022. Highlighting the custody of the petitioner as well progress of investigation, the learned counsel for the petitioner pursued the relief of regular bail with offer to co-operate with trial.

5. Whereas the learned Public Prosecutor produced

the case diary and submitted that after the occurrence, the petitioner herein was absconded. Therefore, investigation against the petitioner as well as accused 3,5,8,9,10 and 11 has been stalled. Further accused Nos.3,5 and 8 to 11 are yet to be arrested. It is also pointed out that final reports against accused 1 to 4 were filed earlier, and thereafter the case was tried as Sessions Case No.630/2020. Accused Nos.1 to 4 were convicted and are undergoing the sentence.

6. It is pointed out by the learned Public Prosecutor B.A.No.216/2023 5

further that the police struggled hard to get custody of the petitioner on 25.10.2022, since he absconded for a lengthy period after committing the offence on 31.05.2020. Therefore, the petitioner is not liable to be released on bail, if so, the petitioner would flee from trial. He also submitted that split charge filed against the accused and therefore, trial can be expedited.

7. It is reported by the Investigating Officer that

there is likelihood of political conflict and communal riot if the petitioner would be released on bail. On perusal of the case diary, it could be gathered that the petitioner/7th accused also attacked the defacto complainant after sharing common intention, being one among the members of the unlawful assembly. In such a case, the complicity of the petitioner could not be read in isolation. It is to be noted that the petitioner absconded after commission of the offence and he

was arrested only on 25.10.2022. Therefore, the B.A.No.216/2023 6 apprehension expressed by the learned Public Prosecutor that the petitioner would flee from trial if he will be released on bail is having force.

Therefore, this petition fails and is liable to be dismissed. Hence the petition is dismissed. Sd/- (A. BADHARUDEEN, JUDGE) rtr/ B.A.No.216/2023 7 APPENDIX OF BAIL APPL. 216/2023 PETITIONER ANNEXURES ANNEXURE A1 A TRUE COPY OF THE POST-MORTEM REPORT PERTAINING TO THE DECEASED, DATED 24.06.2020 ANNEXURE A2 A CERTIFIED COPY OF THE ORDER DATED 02.12.2022 IN CRL.M.C. NO.4071/2022 PASSED BY THE COURT OF SESSION, PALAKKAD DIVISION

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