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Hamza P vs State of Kerala

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Court : Kerala Orders

Decided On : Feb-20-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./1021/2023

Appellant : Hamza P

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN MONDAY, THE 20TH DAY OF FEBRUARY 2023 / 1ST PHALGUNA, 1944 BAIL APPL. NO. 1021 OF 2023 CRIME NO.85/2023 OF MELATTUR POLICE STATION, MALAPPURAM PETITIONER/ACCUSED NO. 1 TO 4 :

1 HAMZA P AGED 69 YEARS, S/O MUHAMMED, POOZHITHODI HOUSE, VELLIYANCHERRY, 2 ANVAR SADATH P AGED 43 YEARS, S/O HAMZA .P, E POOZHITHODI HOUSE, VELLIYANCHERRY, 3 ABDUL BASHEER AGED 53 YEARS, S/O ABDU .P, POOZHITHODI HOUSE, VELLIYANCHERRY, 4 SUHAIB AGED 34 YEARS, S/O

MOHAMED, THACHAMPATTA HOUSE, VELLIYANCHERRY, BY ADVS. P.MOHAMED SABAH LIBIN STANLEY SAIPOOJA SADIK ISMAYIL R.GAYATHRI M.MAHIN HAMZA SRINATH C.V.

RESPONDENTS/STATE AND COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 STATION HOUSE OFFICER MELATTOOR POLICE STATION, BY ADV PUBLIC PROSECUTOR SMT T V NEEMA(SR PP) THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 20th day of February, 2023 This is a petition filed under Section 438 of the Code of Criminal Procedure, seeking pre-arrest bail and the petitioners are accused Nos. 1 to 4 in crime No.85/2023 of Melattur Police Station, Malappuram.

2. Heard the learned counsel for the petitioners as well as the learned Public Prosecutor. Perused the relevant materials form part of the case diary, placed by the learned Public Prosecutor.

3. The case of the prosecution is that, at 20.00 hours on

27.01.2023, while the defacto complainant was going to his house from Cheripparambu, he was wrongfully restrained by the accused in front of the Congress Party Office and thereafter they assaulted the defacto complainant. The specific allegation is that, the accused herein jointly manhandled the defacto complainant by using an iron rod and sword. This is the base on which the prosecution alleges commission of offences punishable under Sections 341, 323, 324, 326 r/w 34 of IPC.

4. While pressing for grant of anticipatory bail for the

petitioners, the learned counsel for the petitioners submitted that the petitioners are innocent and the defacto complainant, who is a habitual offender was assaulted by the people in the locality, since he twisted the hands of the wife of the 2 nd accused in an occurrence at 12.44 pm on the same day (27.01.2023). He also submitted that, the copy of wound certificate produced as Annexure.A4 would show the treatment of the wife of the 2 nd accused in connection with the occurrence at Moulana Hospital, Perinthalmanna.

5. Whereas the learned Public Prosecutor placed the

relevant materials including the FIS, wound certificate and treatment certificate in relation to the defacto complainant, while opposing grant of bail to the petitioners.

6. In the FIS, the defacto complainant stated the

occurrence in detail and use of iron rod and sword by the accused to beat on his left leg and right hand. On going through the wound certificate and discharge summery it is discernible that the defacto complainant sustained following injuries:

1. Fracture shaft of tibia middle 1/3

2. Undisplaced fracture distal 1/3 right ulna

7. Apart from that he also sustained lacerated wound

2x0.5x0.5 cm above left eyebrow, multiple abrasions over upper back and contusion over anterior chest wall. Thus the overt acts and corresponding injuries are noted in the treatment certificate wound tally each other. In such a case, if at all the earlier occurrence as pointed out by the learned counsel for the petitioners is true, then also the same is not a justification for doing the alleged overt acts. Therefore, the complicity of the petitioners as alleged by the prosecution is well made out, prima facie, and in such a case, arrest, custodial interrogation and recovery of weapons at their instance are inevitable part of the

investigation to accomplish meaningful investigation.

8. Therefore, release of the petitioners on anticipatory

bail would hamper the investigation. Therefore, anticipatory bail plea at the instance of the petitioners is found to be not sustainable. Accordingly, this bail application is dismissed. Since the learned counsel for the petitioners expressed willingness to surrender, they are at liberty to do so. Sd/- A. BADHARUDEEN SK JUDGE

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