

Jishnu, vs the State of Kerala,

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Court : Kerala Orders

Decided On : Feb-22-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./1073/2023

Appellant : Jishnu,

Respondent : The State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
WEDNESDAY, THE 22ND DAY OF FEBRUARY 2023 / 3RD
PHALGUNA, 1944 CRIME NO.62/2023 OF SASTHAMCOTTA POLICE
STATION, KOLLAM PETITIONER/ACCUSED: JISHNU, AGED 25
YEARS , S/O LATE MANOJKUMAR, RESIDING AT JISHNU
BHAVANAM, KIDANGAYAM, KANNIMEL, NORTH MYNAGAPPALLY,
KOLLAM, PIN - 690519 BY ADV A.JANI(KOLLAM) RESPONDENTS: 1
THE STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN -
682031 2 THE SUB INSPECTOR OF POLICE, SASTHAMCOTTA
POLICE STATION, KOLLAM RURAL PIN 691 500 (CRIME NO: 62

DATED BY T.V.NEEMA SR.PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 22nd day of February, 2023 This is an application for anticipatory bail filed by the first accused in crime No.62/2023 of Sasthamcotta police station, where the accused alleged to have committed offences punishable under Sections 323, 341, 294(b) and 308 read with Section 34 of IPC.

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

3. I have perused the relevant records forming part of the case diary placed by the learned Public Prosecutor.

4. The prosecution allegation is that at 10.30 p.m. on

12.01.2023, after consuming alcohol, when the defacto complainant and the accused herein reached the road near Pachakulath House. Thereafter, the first accused slapped on the cheek of the defacto complainant and thereafter attempted

to cause stab injury on this head. When the same was evaded, the same caused injury on his forehead. The further allegation is that when the defacto complainant is about to run towards his car, the first accused followed him and thereafter caused multiple injuries on his body by using a knife, in his attempt to commit culpable homicide, not amounting to murder. This is the basis on which the prosecution alleges commission of the above offences.

5. While pressing for grant of anticipatory bail to the

petitioner, who has criminal antecedents as reported by the Investigating Officer, it is pointed out by the learned counsel for the petitioner that though the petitioner is having criminal antecedents, the overt acts alleged against the petitioner in the

above cases are less and two more cases reported as antecedents were pertaining to occurrences reported in connection with college union activities while the petitioner was studying in Devaswom Board College, Sasthamcotta. He also pointed out that since the overt acts are less, the petitioner may be released on bail and he is ready to co-operate with the investigation.

6. Whereas the learned Public Prosecutor strongly

opposed bail not only by highlighting the antecedents, but also pointing out the necessity of custodial interrogation. It is also submitted that as per the allegation in the FIS, when injuries in the wound certificate pertaining to the defacto complainant is perused, corresponding injuries in parity with the allegations could be noticed and therefore, the prosecution case is well established. Thus, arrest, custodial interrogation and recovery of the weapon at the instance of the petitioner are absolutely necessary to accomplish meaningful investigation and eventful prosecution.

7. I have perused the FIS ignoring the antecedents of the petitioner, which is reported as under:.

1. Crime No. 368/2018 of Sasthamcotta police station under Sections 143, 147, 148, 323, 324 r/w 149 IPC

2. Crime No.1128/2018 of Sasthamcotta police station under Sections 341, 294(b), 323, 324, 326, 34 IPC

3. Crime No.1178/2021 of Sasthamcotta police station under Sections 120(B), 294(b), 436, 447 r/w 34 IPC and Section 3(a) of Explosive Substance Act.

8. On perusal of the FIS, it could be gathered that at

the place of occurrence, the defacto complainant and the accused reached after consumption of alcohol and the first accused then attempted to cause cut injury on the head of the defacto complainant and the same when evaded caused injuries on forehead. Thereafter, the defacto complainant attempted to ran away from the place of occurrence towards his car, then the accused followed him and caused

injuries on his body repeatedly. On perusal of the wound certificate, the injuries are,

1. 3x2 cm size injury on the forehead.

2. Incised wound 20 x 1 cm on back

3. Incised wound 10 x 0.5 cm on back

4. Incised wound 5 x 0.5 cm (3)

5. Incised wound 4x.5 cm (2)

6. Incised wound 5x 05 cm

9. Thus, the allegation of the prosecution as to assault

at the instance of the first petitioner by using a knife is well established prima facie, not only by the FIS given by the defacto complainant but also by the wound certificate which is in parity with the FIS. Therefore, this is not a fit case to grant anticipatory bail to the petitioner, where arrest, custodial interrogation and recovery of the weapon at the instance of the petitioner are absolutely necessary, as rightly pointed out by the learned Public Prosecutor.

Faced with the situation, the learned counsel for the petitioner expressed willingness of the petitioner to surrender before the Investigating Officer and to co-operate with the investigation. Since surrender is a voluntary action, the same is permitted and the petitioner can surrender before the Investigating Officer. Sd/- A. BADHARUDEEN JUDGE nkr APPENDIX OF BAIL APPL. 1073/2023 PETITIONER ANNEXURES Annexure A1 TRUE COPY OF CERTIFICATE OF THE PETITIONER PARTICIPATED IN ALL INDIA INTER UNIVERSITY CHAMPIONSHIP REPRESENTING THE UNIVERSITY OF KERALA AND A CERTIFICATE DATED Annexure A2 TRUE COPY OF THE CERTIFICATE DATED THIRD PLACE IN KERALA UNIVERSITY INTER COLLEGIATE MEET HELD ON 30/11/2019 Annexure A3 A TRUE COPY OF THE LETTER DATED 07/01/2021 ISSUED BY THE PRINCIPAL OF THE COLLEGE TO THE PETITIONER WAS ELECTED AS UNIVERSITY COUNSELLOR FROM D.B.

COLLEGE, SASTHAMCOTTA.

Annexure A4 TRUE COPY OF THE CERTIFICATE DATED PHYSICAL EDUCATION, UNIVERSITY OF KERALA, Annexure A5 A TRUE COPY OF CERTIFICATE DATED PHYSICAL EDUCATION, UNIVERSITY OF KERALA, Annexure A6 A TRUE COPY OF THE CERTIFICATE DATED PHYSICAL EDUCATION, UNIVERSITY OF KERALA, Annexure A7 A TRUE COPY OF F.I.R IN CRIME NO: 62/2013 OF THE SASTHAMCOTTA POLICE STATION DATED Annexure A8 A TRUE COPY OF THE REMAND APPLICATION DATED 13/01/2023 SUBMITTED BY THE S.I. OF SASTHAMCOTTA POLICE STATION, IN CRIME NO Annexure A9 TRUE COPY OF FIR IN CRIME NO 0368/2018/ DATED 21/02/2018 OF SASTHAMCOTTAH POLICE STATION Annexure A10 TRUE COPY OF FIR IN CRIME NO 1128/2018 OF THE SASTHAMCOTTAH POLICE STATION DATED Annexure A11 TRUE COPY OF FIR NO 1178/2021 OF THE SASTHAMCOTTAH POLICE STATION DATED

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