

Akash vs State of Kerala

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Court : Kerala

Decided On : Feb-28-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./1208/2023

Appellant : AKASH

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
TUESDAY, THE 28TH DAY OF FEBRUARY 2023/9TH PHALGUNA,
1944 BAIL APPL. NO.1208 OF 2023 AGAINST THE
ORDER/JUDGMENT IN CMP 734/2023 OF JUDICIAL MAGISTRATE
OF FIRST CLASS-II, KOLLAM CRIME NO.89/2023 OF ERAVIPURAM
POLICE STATION, KOLLAM PETITIONERS/ACCUSED 1 & 2: 1
AKASH, AGED 21 YEARS, S/O,MADHU, HIMASHYLAM HOUSE,
G.V.JAGAR 108, AYATHIL CHERY, VADAKKEVILA ,KOLLAM, PIN -
691020. 2 MADHU, S/O.THULASEEDHARAN, HIMASHYLAM HOUSE,
G.V.JAGAR 108, AYATHIL CHERY, VADAKKEVILA, KOLLAM, PIN -
691020. BY ADV. SRI.M.R.SASITH RESPONDENT: STATE OF

KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031. BY ADV. SRI.P.G.MANU, SR.PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O R D E R

Dated, this the 28th February, 2023 This is a petition filed under Section 439 of the Code of Criminal Procedure, 1973 and the petitioners are accused Nos.1 and 2 in crime No.89/2023 of Eravipuram Police Station, Kollam, where accused Nos.1 and 2 alleged to have committed offences punishable under Sections 341, 294(b), 323, 324, 326, 506, 307 and 34 of Indian Penal Code and the petitioners seek regular bail.

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

3. Perused the relevant documents placed by the learned Public Prosecutor forming part of the Case Diary.

4. The prosecution allegation is that due to the previous animosity, the accused persons in furtherance of their common intention to cause hurt and murder of the defacto complainant, at

about 12:00 p.m. on 13.01.2023 at

the defacto complainant down by fisting on the back of the informant. Further the 1st accused hacked on the head of the defacto complainant by using a sword and caused fracture to his skull bone and thereby internal bleeding from his head. The accused again attempted to cause injury to the defacto complainant, when the same was warded of the defacto complainant sustained fracture to his hand. Thereafter the 2nd accused criminally intimidated to kill the informant and stamped the informant repeatedly. Thus, the prosecution alleges commission of the above offences.

5. While canvassing regular bail to the

petitioners, the learned counsel for the petitioners pointed out that the petitioners are innocent and the serious injuries in the nature of fracture as alleged by the prosecution is the outcome of the attack by one Akash, having the

same name of the 1st accused, and the

since he was attacked by the 3rd accused, whose name is also Akash. That apart, he has pointed out the progress of investigation and the custody of the petitioners from 13.01.2023, as reasons for granting regular bail to the petitioner with offer to co-operate with investigation.

6. The learned Public Prosecutor opposed bail on pointing out the injuries noted in the wound certificate, viz., skull bone fracture with active bleeding while opposing bail. But as per the discharge summary the injuries sustained

to the defacto complainant is fo

much progress.

7. On perusal of the prosecution records

along with the discharge summary, it could be gathered that the 1st accused used a sword to attack the defacto complainant and the same caused injury and fracture on his left wrist, though it has been stated in the wound certificate that he sustained skull bone fracture.

8. It is reported by the Investigating

Officer that the 1st accused is a person having criminal antecedents and he has involvement in Crime No.937/2021 of Eravipuram Police Station, under Section 354(D)(I), 305 IPC and Section 12 r/w 11(iv) of POCSO Act. The 2nd accused has no criminal antecedents.

9. Since the investigation has achieved

much progress, I am inclined to release the petitioners on bail on conditions and one among the conditions is that they shall not involve or indulge in any offence during the currency of bail and any such event, if reported or came to the notice of this Court, the same alone shall be a reason to cancel the bail hereby granted.

10. Accordingly, this petition stands allowed and the petitioners are enlarged on bail on the following conditions:

- i. The petitioners shall be released on bail on his executing bond for Rs.50,000/- (Rupees Fifty Thousand Only) with two solvent sureties, each for the like amount to the satisfaction of the Jurisdictional court, concerned.
- ii. The petitioners shall not intimidate the witnesses or tamper with evidence.
- iii. They shall co-operate with the investigation and they shall appear before the Investigating Officer on every Monday from the date of release on bail, for a period of two months or till the final report will be filed, whichever occur first.
- iv. The petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of this case, so as to dissuade them from disclosing such facts to the court or to any police officer.
- v. The petitioners shall not involve in any other offence during the currency of bail and any such event, if reported to come to the notice of this court, the same alone shall be a reason to cancel the bail hereby granted.

Sd/- A.BADHARUDEEN, JUDGE. ww APPENDIX OF BAIL APPL. 1208/2023
PETITIONERS' ANNEXURES: ANNEXURE A1 THE TRUE COPY OF THE ORDER DATED CLASS MAGISTRATE COURT II, KOLLAM IN CMP NO.734/2023. ANNEXURE A2 TRUE COPY OF FIR NO.89/2023 OF ERAVIPURAM POLICE STATION DATED

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