

Rahim M vs State of Kerala Represented by the Public Prosecutor High Court of Kerala

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Court : Kerala

Decided On : Feb-28-2023

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : Bail Appl./1474/2023

Appellant : Rahim M

Respondent : State of Kerala Represented by the Public Prosecutor High Court of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA,
BAIL APPL. NO. 1474 OF 2023 [CRIME NO.113/2023 OF
KANNANALLOOR POLICE STATION, KOLLAM] PETITIONER/S: 1
RAHIM M AGED 60 YEARS S/O. MUHAMMED KUNJU, LAKSHAM
VEEDU COLONY, CHEREEKONAM, KANNANALLOOR. P.O,
THRIKKOVILVATTOM VILLAGE, KOLLAM, PIN - 691576 2 SHANAVAS
AGED 35 YEARS LAKSHAM VEEDU COLONY, CHEREEKONAM,

KANNANALLOOR. P.O, THRIKKOVILVATTOM VILLAGE, KOLLAM, PIN - BY ADV M.RAJESH RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA HIGH COURT OF KERALA ERNAKULAM, PIN - 682031 2 THE STATION HOUSE OFFICER KANNANALLOOR POLICE STATION KANNANALLOOR PO, KOLLAM (DIST), PIN - 691576 OTHER PRESENT: ADV C S HRITHWIK - SR PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2 :

ORDER

Dated this the 28th day of February, 2023 The petitioners are accused Nos.1 and 2 in crime No.113/2023 of Kannanalloor Police Station. The offences alleged against the petitioners are under Section 294(b), 341, 323, 324, 308, read with Section 34 of the Indian Penal Code.

2. The prosecution case is that on 26.01.2023, when the

defacto complainant and his mother were on their way home with his sister's daughter, 1st accused wrongfully restrained them in front of his house, abused and beaten him with an iron rod on his head. However, as the defacto complainant blocked their blow with his hand, he sustained injuries, and he escaped from a possible death. It is further alleged that the 2 nd accused took a knife from his pocket and assaulted the defacto complainant, and while preventing the said attack, he sustained an injury on his hand. It is further alleged that the grand mother of the defacto complainant who came there was also assaulted by the 3 rd accused using a wooden stick. The crime was registered based on the said allegations, and this application for anticipatory bail is submitted by accused Nos.1 and 2 as they apprehend arrest. :3 :

3. The learned counsel for the petitioners submits that the

petitioners are falsely implicated in this case. The learned counsel made the aforesaid submission by placing reliance upon Annexure-3 F.I.R. registered as

Crime No.112/2023 by the same Police Station, which was registered based on the information furnished by the 1st petitioner herein against the defacto complainant in this case and some other persons. It is pointed out that, in the said crime, the offences alleged are under Sections 341, 294(b), 324, 326, and 308 read with Section 34 of the Indian Penal Code. It is pointed out that the said incident occurred between 8.30 hours and 8.40 on 26.01.2023, whereas the incident, which is the subject matter of Crime No.113/2023 occurred at 9 a.m. on the same date. By placing reliance upon it, it was contended that, as per the same, the petitioners were assaulted by the defacto complainant in this case, and he sustained severe injuries, which resulted in the registration of the aforesaid crime involving offence under Section 326 of the Indian Penal Code. It is pointed out that the allegations contained in Annexure-1 F.I.R. in Crime No.113/2023 are highly improbable, as the contents of Annexure-3 F.I.R. would indicate that the petitioners have sustained serious injuries in the said incident and the petitioner was taken to the hospital by 9.15 a.m. on the same date. Annexure- 2 wound certificate was relied on by the petitioner to substantiate :4 : the same. In such circumstances, the learned counsel for the petitioners seeks anticipatory bail.

4. On the other hand, the learned Public Prosecutor would

oppose the aforesaid contentions. It is contended that there are certain specific allegations raised against the petitioners. The matter is now under investigation. However, it is submitted by the learned Public Prosecutor that the recovery of the weapons allegedly used by the petitioners were already affected.

5. I have gone through the records and heard the

contentions raised from both sides. As rightly pointed out by the learned counsel for the petitioners, the contents of Annexure-3 F.I.R., which was registered based on the information furnished by the petitioners, would indicate that the petitioners sustained serious injuries due to the assault made by the defacto complainant in this case and some other persons. If that be so, the incident in the manner as contemplated in Annexure-I F.I.R. is improbable, contents the learned counsel for the petitioners. On perusal of the entire materials, the said contentions cannot be brushed aside. This is particularly because Annexure-2 wound certificate indicates

that the petitioner was admitted to the hospital by 9.15 a.m. on 26.01.2023. It is also discernible from the records that, no serious injuries were sustained by any of the victims. Now the recovery of :5 : the weapons were already affected and therefore, the custodial interrogation of the petitioners appears to be not necessary. In such circumstances, I am of the view that the interest of justice would be served if the cooperation of the petitioners with the investigation is ensured. In such circumstances, this bail application is disposed of with the following directions:

(1) The petitioners shall surrender before the Investigating Officer, within a period of two weeks from today, for subjecting themselves to interrogation.

(2) After interrogation, the petitioners shall be released on

bail on the very same day of surrender upon the petitioner executing a bond for Rs.1,00,000/- (Rupees One Lakh only) with two sureties each for the like sum, to the satisfaction of the Investigating Officer.

(3) The petitioners shall fully cooperate with the investigation, including subjecting themselves to the deemed police custody for the purpose of recovery, if any, as and when demanded.

(4) The petitioners shall appear before the Investigating Officer between 10.00 a.m and 11.00 a.m. every Saturday until the filing of the final report.

(5) The petitioners shall also appear before the Investigating Officer as and when required.

(6) The petitioners shall not commit any offence of similar nature while on bail. :6 :

(7) The petitioners shall not make any attempt to contact any

of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.

(8) The petitioners shall not leave the State of Kerala without

the permission of the Jurisdictional Court. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation of bail, if any, and pass appropriate orders in accordance with the law. Sd/- ZIYAD RAHMAN A.A. JUDGE ncd :7 : APPENDIX OF BAIL APPL. 1474/2023 PETITIONER ANNEXURES Annexure1 THE TRUE COPY OF THE FIR IN CRIME NO. Annexure2 THE TRUE COPY OF THE WOUND CERTIFICATE DATED 26.1.2023 ISSUED FROM AL-SHIFA HOSPITAL, KANNANALLOOR IN RESPECT OF THE 1ST PETITIONER Annexure3 . THE TRUE COPY OF THE FIR IN CRIME NO. Annexure4 THE TRUE COPY OF THE ORDERS OF THE HON'BLE PRINCIPAL SESSIONS JUDGE, KOLLAM DATED 15.02.2023 IN CRL MC NO.

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