

Binil vs State of Kerala

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Court : Kerala

Decided On : Mar-21-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./2070/2023

Appellant : BINIL

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 MARCH 2023 / 30TH PHALGUNA, 1944
CRIME NO.86/2023 OF KAIPAMANGALAM POLICE STATION,
THRISSUR, Thrissur PETITIONERS/ACCUSED NO.1 AND 2: 1 BINIL
AGED 51 YEARS S/O LATE CHANDRAN, NELLIKKATHARA HOUSE,
KAIPAMANGALAM P.O., KODUNGALLUR TALUK, TRICHUR., PIN -
680681 2 SIJO MON AGED 35 YEARS S/O JOY, PLAPPILLY HOUSE,
MAMURI VILLAGE, OORAMANA, MUVATTUPUZHA TALUK
ERNAKULAM, PIN - 686663 BY ADVS. T.M.CHANDRAN P.VIJAYA
BHANU (SR.)(K/421/1984) RESPONDENTS/STATE-COMPLAINANT: 1
STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,

HIGH COURT OF KERALA, PIN - 682031 2 SUB INSPECTOR OF POLICE KAIPAMANGALAM POLICE STATION KAIPAMANGALAM, TRICHUR, PIN - 680681 BY SRI.P.G.MANU, SR. PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 21st day of March, 2023 This is an application for anticipatory bail filed by accused Nos.1 and 2 in crime No.86/2023 of Kaipamangalam police station.

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

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

4. The prosecution case is that at about 5.30 pm on

21.05.2022, the accused herein alleged to have caused serious injuries to the defacto complainant, when the defacto complainant and his friends questioned excessive billing after consuming alcohol. According to the defacto complainant, he sustained injuries on his left eye and thereby he lost his eye vision. Alleging so, the defacto complainant filed a complaint before the Judicial First Class Magistrate Court, Kodungallur and when the same was forwarded by the learned Magistrate for investigation by resorting to Section 156 (3) of Cr.P.C., crime alleging commission of offences punishable under Sections 341, 324, 326, 307 and 308 read with Section 34 of IPC was registered.

5. It is submitted by the learned Senior counsel

appearing for the petitioners that this case was registered without any legal sustenance, after registering a crime as early on 22.05.2022 as crime No.376/2022 of Kaipamangalam police station, based on the First Information

Statement given by the second accused herein. The defacto complainant in this crime did not make any complaint for a long period of 8 months and a private complaint was lodged before the Magistrate to put the law in motion. The learned Magistrate, without applying his mind properly, mechanically forwarded the private complaint for investigation under Section 156(3) of

Cr.P.C. and which led to registration of this crime. The learned Senior counsel also submitted that the entire

allegations are false and even a scrap of paper available before this Court to see that at any earlier occasion, the present defacto complainant raised any complaint as to the occurrence narrated in the private complaint. According to the learned Senior Counsel, in the facts of the given case, particularly, with reference to the earlier crime registered against the defacto complainant, arraying him as second accused, the prosecution case could not be believed even prima facie. Therefore, the petitioners are entitled to get pre-arrest bail and they are ready to co-operate with the investigation in the matter of interrogation as well as recovery of weapons during the deemed custody, if they would be permitted to surrender by granting anticipatory bail.

6. The learned Public Prosecutor strongly opposed

anticipatory bail to the petitioners and submitted that the prosecution records would justify the prosecution case, prima facie, though crime was registered on the basis of a private complaint, as submitted by the learned counsel for the petitioner. Therefore, the learned Public Prosecutor pointed out necessity of custodial interrogation and recovery of weapons.

7. Coming to the core issue, the earlier crime was

registered on 22.05.2022, on the allegation that the defacto complainant herein, along with his henchmen, attacked the owner of the Bar and staff and thereby they sustained injuries. Even though crime No.376/2022 was registered, the defacto complainant herein remained in silence for a pretty long period, without even filing a complaint before the police or before any other authorities, though the defacto

complainant would allege that he sustained serious injuries on his left eye. The attitude of the defacto complainant shadows doubt in the prosecution case prima facie. However, the same would require detailed investigation and the Investigating Officer's power in this regard is left open.

8. When considering the fact that earlier crime was

registered arraying the defacto complainant as the second accused and after a pretty long period of 8 months, the second accused in the earlier crime moved a complaint before the learned Magistrate and based on which, this crime was registered, the genesis of the counter case is a matter to be decided during evidence by the trial court, if final report would be filed accordingly. Having considered the factual aspects, on ensuring interrogation and recovery of weapons during the deemed custody of the petitioners, I am inclined to grant anticipatory bail to the petitioners on conditions, and with

specific direction to them to subject themselves for interrogation for a period of two days in between 10.00 am 1.00 pm. to facilitate investigation. In the result, this petition stands allowed. The petitioners are enlarged on bail on conditions:

- i. The petitioners shall surrender before the Investigating Officer within ten days from today and on such surrender, the Investigating Officer can question the petitioners for two days in between 10.00 am 1.00 pm, and recover weapon, if any. In the event of their arrest, the Investigating Officer shall produce the petitioners before the Jurisdictional Court on the date of arrest itself.
- ii. On such production, Jurisdictional Court shall release the petitioners on bail, on executing bond for Rs.30,000/- (Rupees Thirty thousand) each, by themselves and by two sureties, each for the like sum to the satisfaction of the Jurisdictional Court.
- iii. The petitioners shall co-operate with the investigation and shall be made available for interrogation and for the purpose of investigation, as and when the Investigating Officer directs so. Further the petitioners shall meet the investigating officer on all Mondays in between 10.00 a.m and 04.00 p.m., without fail, for a period of two months to aid the

investigation. iv. The petitioners shall not intimidate the witnesses or interfere with the investigation in any manner. v. The petitioners shall not commit any offence during currency of this bail and any such involvement is a reason to cancel the bail hereby granted.

Sd/- A. BADHARUDEEN JUDGE nkr

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