

Arif vs State of Kerala

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Court : Kerala

Decided On : Mar-31-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./2131/2023

Appellant : ARIF

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
FRIDAY, THE 31ST DAY OF MARCH 2023 / 10TH CHAITHRA, 1945
BAIL APPL. NO. 2131 OF 2023 AGAINST THE
ORDER/JUDGMENTCRMC 517/2023 OF ADDITIONAL DISTRICT
COURT (ADHOC)-II, TRIVANDRUM CRIME NO.17/2023 OF PETTAH
POLICE STATION, THIRUVANANTHAPURAM
PETITIONERS/ACCUSED 1, 2 & 4: 1 ARIF, AGED 31 YEARS
S/O.SALIM,TC 24/1369, CHARUVILAKAM VEEDU, THYCAUD,
METTUKADA, THIRUVANANTHAPURAM, PIN - 695014. 2 MUNNA @
ASIF, AGED 35 YEARS, S/O. SALIM, TC THIRUVANANTHAPURAM,
PIN - 695014. 3 JOMON RAMESH, AGED 24 YEARS, S/O. RAMESH,

TC THIRUVANANTHAPURAM, PIN - 695009. BY ADVS. P.MOHANDAS (ERNAKULAM) K.SUDHINKUMAR SABU PULLAN GOKUL D. SUDHAKARAN R.BHASKARA KRISHNAN K.P.SATHEESAN (SR.) RESPONDENTS/STATE & COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031. 2 THE INSPECTOR OF POLICE PETTAH POLICE STATION, THIRUVANANTHAPURAM CITY, THIRUVANANTHAPURAM, PIN - 695024. SENIOR PUBLIC PROSECUTOR SMT.T V NEEMA THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 23.03.2023 ALONG WITH B.A.NO.2149/2023, THE COURT ON 31.03.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN FRIDAY, THE 31ST DAY OF MARCH 2023 / 10TH CHAITHRA, 1945 BAIL APPL. NO. 2149 OF 2023 AGAINST THE ORDER/JUDGMENTCRMC 518/2023 OF ADDITIONAL DISTRICT COURT (ADHOC)-II, TRIVANDRUM CRIME NO.17/2023 OF PETTAH POLICE STATION, THIRUVANANTHAPURAM PETITIONER/7TH ACCUSED: RANJITH, AGED 21 YEARS, S/O.RAMESH VASANTHA BHAVAN, TC 10/2018, KPNRA 130, KANJIRAMPARA P.O., THIRUVANANTHAPURAM,PIN-695030. BY ADVS. P.MOHANDAS (ERNAKULAM) K.SUDHINKUMAR SABU PULLAN GOKUL D. SUDHAKARAN R.BHASKARA KRISHNAN K.P.SATHEESAN (SR.) RESPONDENT/STATE & COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031. 2 THE INSPECTOR OF POLICE PETTAH POLICE STATION, THIRUVANANTHAPURAM CITY, THIRUVANANTHAPURAM, PIN - 695024. BY SENIOR PUBLIC PROSECUTOR SMT. T.V.NEEMA THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 23.03.2023 ALONG WITH

B.A.NO.2131/2023, THE COURT ON 31.03.2023 DELIVERED THE FOLLOWING:

A. BADHARUDEEN, J.

===== B.A.No.2131 of 2023 and
B.A.No.2149 of 2023 ===== Dated
this the 31st day of March, 2023

ORDER

Both these petitions have been filed under Section 439 of the

Code of Criminal Procedure, seeking bail and the petitioners in B.A.No.2131/2023 are accused Nos.1, 2 and 4 and the petitioner in B.A.No.2149/2023 is accused No.7 in crime No.17/2023 of Pettah Police Station, Thiruvananthapuram, where accused Nos. 1 to 14 alleged to have committed offences punishable under Sections 143, 144, 147, 148, 341, 342, 294(b), 324, 506(ii), 427, 120B, 326 and 307 r/w 149 of the Indian Penal Code ('IPC' for short hereinafter) and 27 of Arms Act.

2. Heard the learned counsel for the petitioners as well as the learned Public Prosecutor. Perused the lengthy report accompanied by the case diary as such, placed by the learned Public Prosecutor.

3. The prosecution allegation is that, at 3.00 hours on

08.01.2023, accused Nos.1 to 4 along with other accused formed into an unlawful assembly after sharing common intention with knowledge that they are all members of the said assembly, armed with deadly weapons, with intention to commit culpable homicide not amounting to murder, wrongfully restrained the defacto complainant, while he was traveling in a car bearing registration No.KL-01-CT-7270 by placing the car driven by the accused persons across the car where the defacto complainant was traveled and thereafter they have assaulted the defacto complainant with intention to do away him. Pursuant to the said occurrence, crime was registered alleging commission of the above offences.

4. The learned counsel for the petitioners would submit that the petitioners are innocent and the allegations are false. It is

further submitted that the petitioners have been in custody from 21.01.2023 and the investigation requiring their custody is practically over and, therefore, they may be released on bail.

5. While opposing grant of bail to the petitioners, the learned

Public Prosecutor specifically pointed out the overt acts at the instance of the petitioners that, when Innova car bearing Registration No.KL 01 CT 7270, in which the defacto complainant along with his friends were travelling from Chakka to Pattoor, parked on the opposite side of Indian Oil Bunk, Pattoor, accused Nos.3 and 4 parked TATA Safari car in front of the Innova car and accused 1 and 2 parked a white car in which they reached the spot behind the Innova car to make obstruction to the defacto complainant. Thereafter accused No.3 inflicted serious injuries by using a knife on the right hand and right leg of the defacto complainant who was sitting in the Innova car; accused Nos.1 and 2 inflicted serious injuries to the owner of the Innova car who was sitting left to the defacto complainant, using deadly weapons like

sword, etc. on the left hand and left leg; accused No.4 and 3 others caused serious injuries on the head and legs of a person who was sitting in the back seat along with the defacto complainant, with intention to commit culpable homicide not amounting to murder, as could be borne out from the treatment certificate forming part of the case diary. The learned Public Prosecutor submitted further that, even otherwise the complicity of the petitioners is at par with the other accused since they are among the members of the unlawful assembly, who assaulted the defacto complainant. The learned Public Prosecutor strongly opposed bail on the submission that the allegations are well made out against the petitioners, prima facie. It is pointed out that the petitioners herein except accused

No.7, are persons having criminal antecedents. It is further submitted that if the petitioners would be released on bail, they would definitely involve in other crimes.

6. The following are the antecedents of the 1 st petitioner reported in Museum Police Station:

i) Crime Nos.762/2013 u/s 143, 147, 148, 324, 341, 294(b) IPC; ii) Crime 1276/2016 u/s 294 (b), 323, 324, 34 IPC; iii) Crime 2000/2016 u/s 143, 147, 148, 149, 452, 341, 323, 324, 325, 427, 354 IPC & 27 of Arms Act; iv) Crime 64/2019 u/s 323, 324, 341, 294(b), 34 IPC; v) Crime 1860/2019 u/s 385, 34 IPC.

Antecedents of the 1st petitioner in Poojappura Police Station

i) Crime 1593/2018 u/s 143, 147, 148, 201, 202, 294(b), 506(ii), 326, 308 IPC.

7. Antecedents of the 2 nd petitioner in B.A.No.2131/2023 in Museum Police Station i) Cr.762/2013 u/s 147, 148, 324, 341, 294(b) IPC; ii) Cr.1276/2016 u/s 294(b), 323, 324, 34 IPC;

iii) Cr.2000/2016 u/s 143, 147, 148, 149, 452, 341, 323, 324, 325, 427, 354 IPC & 27 of Arms Act; iv) Cr.64/2019 u/s 323, 324, 341, 294(b), 34 IPC; v) Cr.1860/2019 u/s 385, 34 IPC.

8. Antecedents of the 3rd petitioner/4th accused in B.A.No.2131/2023 in Museum Police Station: i) Cr.1860/2019 u/s 385, 34 IPC.

Antecedents of the 3rd petitioner/4th accused in B.A.No.2131/2023 in Vanchiyoore Police Station: i) Cr.2001/2018 u/s 279 IPC & 185 MV Act; ii) Cr.1096/2019 u/s 279 IPC.

9. No antecedents reported in so far as the 7 th accused/petitioner in B.A.No.2149/2023 is concerned.

10. In this matter, this Court granted regular bail to the 5 th

accused after a substantial period of custody, so as to facilitate him to write third year LLB examination started on 28.02.2023. While granting bail to the 5th accused, this Court taken note of the fact that the 5th accused is a first time offender and his overt acts are not so serious as in the case of accused 1 and 2.

11. However, on perusal of the case diary along with prosecution records, it is discernible that, one Nithin sustained very

serious injuries including compound comminuted fracture shaft of ulna with butterfly fragment and corresponding 6 injuries throughout his body, though he survived. Similarly, Praveen and Tintu Sekhar also sustained lengthy injuries though they did not sustain fracture.

12. Going through the prosecution allegations read with the criminal antecedents of accused Nos.1 and 2 the apprehension expressed by the learned Public Prosecutor as to their involvement

in further crimes of serious nature is having force. However, accused No.7 has no criminal antecedents and accused No.4 has involved in 3 crimes, out of which 2 are under Section 279 of IPC, and they have been in custody from 21.01.2023 onwards. It is true that the 8th accused Omprakash is not arrested so far, as pointed out by the learned Public Prosecutor. But the same by itself is not a ground to detain the petitioners in custody even after 70 days. Therefore, I am inclined to allow the bail plea at the instance of the petitioners by imposing stringent conditions and one among the

conditions is that the petitioners shall not involve in any other offence during the currency of bail and any such event, if reported, or came to the notice of this Court, the same shall be a reason to cancel the bail hereby granted.

13. Accordingly, the bail plea at the instance of the petitioners stands allowed on the following conditions: i. Accused Nos.1, 2, 4 and 7 shall be released on bail on their

executing bond for Rs.50,000/- (Rupees Fifty Thousand Only) each with two solvent sureties, each for the like amount to the satisfaction of the Jurisdictional court concerned. ii. Accused Nos.1, 2, 4 and 7 shall not intimidate the witnesses or tamper with evidence. They shall co-operate with the investigation and shall be available for trial. iii. Accused Nos.1, 2, 4 and 7 shall appear before the Investigating Officer as and when directed, apart from appearing before the

Investigating Officer on all Saturdays between 9 am and 10 am, for a period of two months. iv. Accused Nos.1, 2, 4 and 7 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 him from disclosing such facts to the court or to any police officer. v. Accused Nos.1, 2, 4 and 7 shall not involve or indulge in any other crime 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.
Sd/- (A. BADHARUDEEN, JUDGE) rtr/

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