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Jithu B vs State of Kerala

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Court : Kerala Orders

Decided On : Mar-27-2023

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Bail Appl./2323/2023

Appellant : Jithu B

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH MONDAY, THE 27TH DAY OF MARCH 2023 / 6TH CHAITHRA, 1945 BAIL APPL. NO. 2323 OF 2023 CRIME NO.154/2023 OF KOLLAM EAST POLICE STATION

PETITIONER/1ST ACCUSED: JITHU B AGED 21 YEARS MINTU BHAVAN, THIRUVATHIRA NAGAR-50, MUNDAKKAL VILLAGE, KOLLAM, PIN - 691010 BY ADVS. P.RAHUL ROOPKUMAR G. RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 SRI MP PRASANTH PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27.03.2023, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING: -:2:-

O R D E R

Dated this the 27th day of March, 2023 This application is filed u/s 438 of the Code of Criminal Procedure seeking pre-arrest bail.

2. The applicant is the accused No.1 in Crime No.154/2023 of Kollam East Police Station. The offences alleged are punishable under Sections 142, 143, 294(b), 341, 323, 324, 326 and 149 of IPC.

3. The prosecution case, in short, is that the applicant along with the remaining accused formed an unlawful assembly and in prosecution of the common object of the assembly, on complainant who was coming in a bike and assaulted him with deadly weapon causing fracture and thereby committed the offence.

4. I have heard Sri.P.Rahul, the learned counsel for the applicant and Sri.M.P.Prasanth, the learned Public Prosecutor. Perused the case diary. -:3:-

5. The learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the

present case. The counsel further submitted that no materials are on record to connect the applicant with the alleged crime; hence, he is entitled to get bail. The learned Public Prosecutor, on the other hand, submitted that the alleged incident occurred as a part of the intentional criminal acts of the applicant, and if he is released on bail at this stage, it will affect the course of the investigation.

6. The law regarding the grant or refusal of pre-arrest

bail is well settled. Pre-arrest bail cannot be granted as a matter of course. The power u/s 438 of Cr.P.C could be exercised only when a special case is made out, that too, recording reasons thereof. Perusal of the case diary reveals that the accusation made against the applicant is very serious in nature and it prima facie shows a premeditated criminal act on his part. Moreover, the wound certificate would show that the defacto complainant has sustained fracture in the incident.

Specific overt act has been alleged against the applicant.

-:4:- The investigation is in a preliminary stage. The custodial

interrogation of the applicant is necessary for the investigation. As rightly argued by the learned Public Prosecutor, the possibility of the applicant influencing the witnesses and interfering with the investigation cannot be ruled out if he is released on bail. Considering the gravity of the offence and stage of the investigation, it is not a fit case where extra ordinary jurisdiction vested with this Court u/s 438 of Cr.P.C. could be invoked. The bail application is, accordingly, dismissed.

Sd/- DR. KAUSER EDAPPAGATH JUDGE Rp -:5:- APPENDIX OF BAIL APPL. 2323/2023 PETITIONER ANNEXURES AnnexureA1 TRUE COPY OF THE ORDER OF THE SESSIONS COURT KOLLAM DATED 20.02.2023 IN CRL.M.C NO. 279/ 2023

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