

Anaz. a vs State of Kerala

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Court : Kerala Orders

Decided On : Apr-13-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./2354/2023

Appellant : ANAZ. A

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
THURSDAY, THE 13TH DAY OF APRIL 2023/23RD CHAITHRA, 1945
CRIME NO.158/2023 OF KUNNICODE POLICE STATION, KOLLAM
PETITIONERS/ACCUSED NO.A5, A1, A2 & A3:

1 ANAZ. A AGED 42 YEARS S/O ABDUL RAHIM, ANEEZA MANZIL,
KUNNICODU. P.O, KOLLAM -, PIN - 691508 2 RIYAS N AGED 30
YEARS S/O NOWSHAD, THASKANT MANZIL, AAVANEESWARAM
RAILWAY STATION, KUNNICODE P.O, KOLLAM -, PIN - 691508 3
SABITH. S.S AGED 22 YEARS S/O SAINALABDEED, MUMTHAS
MANZIL, KUNNICODU P.O. KOLLAM - PIN - 691508 4 BICHU @

VISHNU.V. MOHAN AGED 44 YEARS S.M. NIVAS, AVANEESWARAM
RAILWAY STATION P.O. KOLLAM - PIN - 691508 BY ADV K.P.MADHU

RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, COCHIN, PIN -
682031 BY SRI.P.G.MANU, SR.PUBLIC PROSECUTOR THIS BAIL
APPLICATION HAVING BEEN FINALLY HEARD ON 05.04.2023 AND
THE COURT ON 13.04.2023 DELIVERED THE FOLLOWING:

ORDER

Dated this the 13th day of April, 2023 The petitioners herein, who are arrayed as
accused Nos.5, 1, 2 and 3 in crime No.158/2023 of Kunnicode police station,
Kollam, seek the relief of pre-arrest bail in this petition filed under Section 438 of
the Code of Criminal Procedure.

2. Heard the learned counsel for the petitioners 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 1.50 hours on

30.01.2023 accused Nos.1 to 5 formed themselves into an unlawful assembly,
with knowledge that they are all members of the said assembly, armed with deadly
weapons, in prosecution of their common object to commit culpable homicide not
amounting to murder, and then assaulted the defacto complainant. The specific
allegation is that the first

accused beat on the head of the defacto complainant by using a sword and when
the same was restrained, the same caused injury on the left hand of the defacto
complainant. The second accused caused stab injuries on the chest and abdomen
of the defacto complainant by using a sword stick. Accused Nos.3 and 4 destroyed
the doors as well as the windows of the house of the defacto complainant and
thereby caused loss of Rs.8,000/-. It is on this premise, the prosecution alleges

commission of offences punishable under Sections 143, 147, 148, 452, 294(b), 324, 307, 427 and 149 of IPC.

5. The learned counsel for the petitioners would

submit that the allegations are false. In order to substantiate the same, the learned counsel for the petitioners has given emphasis to Annexure A5-FIR, registered just 4 hours before the occurrence on the basis of the statement given by one Muhammed Anas, narrating an occurrence at 9 pm on 29.01.2023. The learned counsel for the petitioners would

submit that, earlier, the defacto complainant in the present case and his men abused and attacked the said Muhammed Anas and for which Annexure A5 FIR, alleging commission of offences under Sections 341, 323, 294(b) and 506 read with Section 34 of IPC, was registered. It is also submitted that the defacto complainant in this case is a person having criminal antecedents. It is also submitted that no serious injuries sustained to the defacto complainant in any manner. Therefore, the petitioners may be released on bail, and they are ready to be abide by any condition as a pre-requisite for grant of anticipatory bail.

6. But the learned Public Prosecutor strongly opposed

bail, highlighting the overt acts with reference to the time of occurrence. The learned Public Prosecutor also pointed out that house trespassing at midnight is a very serious offence. According to the learned Public Prosecutor, house trespass during midnight with intention to commit culpable homicide not amounting to murder, could be seen from the records and corresponding injuries could also be noticed in the copy of wound certificate.

7. On perusal of the entire records, it is true that

Annexure A5-FIR was registered alleging commission of bailable offences at 9 pm on 29.01.2023. However, in this occurrence, the allegation is that the accused, being members of an unlawful assembly, trespassed upon the residence of the defacto complainant and assaulted him with intention to commit murder. The further allegation is that they have destroyed the doors and the windows of the

house of the defacto complainant and caused damages to the tune of Rs.8,000/-. Justifying the overt acts, the scene mahazar shows destruction of windows and doors, and the wound certificate shows injuries, viz.,

1. CLW over Right hand (dorsum)

2. CLW over chest

3. Abrasion over right side of abdomen

4. CLW over right palm (tendon exposed)

8. On perusal of the case records, the allegation of

house trespass at 1.50 pm by the accused could not be justified for any reason. Even if, there may an occurrence, as alleged in Annexure A5, involving bailable offences, the same is not a justification for the accused herein to commit very serious offences alleged herein. That apart, it is relevant to note that the first petitioner/fifth accused is a person having criminal antecedents and the following antecedents were reported.

1. Crime No.141/2021 of Kunnicode police station under Sections 452, 323, 324, 354, 506(ii) read with Section 34 of IPC

2. Crime No.427/2007 of Kunnicode police station under Sections 341, 328, 324 and 34 of IPC.

3. Crime No.152/2023 of Kunnicode police station under Sections 341, 323, 294(b), 506 and 34 of IPC. Thus, it appears that, in this case, arrest, custodial interrogation and recovery of weapons at the instance of the petitioners are absolutely necessary to accomplish meaningful investigation and successful prosecution. Therefore, the petitioners cannot be released on anticipatory bail. In the result, this petition stands dismissed. Sd/- A. BADHARUDEEN JUDGE nkr