

Shihab vs State of Kerala

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Court : Kerala

Decided On : Apr-30-2021

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Bail Appl./2603/2021

Appellant : Shihab

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
FRIDAY, THE 30TH DAY OF APRIL 2021 / 10TH VAISAKHA, 1943
CRIME NO.247/2019 OF Kolathur Police Station , Malappuram
PETITIONER: SHIHAB, AGED 38 YEARS OTTUMMEL HOUSE, EAST
KODUR CHATTIPPARAMBA POST PERINTHALMANNA 676504 BY
ADV. SRI.P.K.MOHAMED JAMEEL RESPONDENT: STATE OF
KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT
OF KERALA 682031 R1 BY PUBLIC PROSECUTOR SMT.SREEJA V.
THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
30.04.2021, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING: ..2.. -----

ORDER

This is an application filed u/s 438 of Code of Criminal Procedure seeking pre-arrest bail.

2. The petitioner is accused No. 5 in Crime No.

247 of 2019 of Kolathur Police Station. The offences alleged are under Sections 308, 353, 427, 379, 109 read with Section 34 of the Indian Penal Code and Sections 20 & 23 of the Kerala Protection of River Banks (Regulation and Removal of Sand) Act.

3. The prosecution case in short is that on

09.12.2019, in the early morning, while the de facto complainant and party was on night patrolling duty, at about 2 a.m, when they reached at Parakkadavu, a lorry bearing Registration No.KL-10-AA-428 came from Parakkadavu side, which was intercepted and on conducting inspection of the lorry, river sand was found. When the de facto complainant

..3..

made request to the first accused, who was the driver of the lorry, to alight from the vehicle, he after pushing away the de facto complainant, drove the lorry in a rash and negligent manner and dashed against the scooter travelled by the policemen and caused damages to the vehicle to the tune of Rs.30,000/- and thus, deterred them from discharging their official duties as public servants and thereby committed the offence.

4. Heard both sides and perused the case diary.

5. The learned counsel for the petitioner submitted that the petitioner is absolutely innocent and he has

been falsely implicated in the present case. He further submitted that there are no materials to connect the petitioner with the alleged crime and hence he is entitled to get bail. The learned Public Prosecutor opposed the bail application. He

contended that the alleged incident occurred as a part of the intentional criminal acts of the petitioner and if the petitioner is released on bail at this stage, it would affect the course of investigation.

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6. The petitioner is a cleaner in the lorry in question. No serious overt act has been alleged against the petitioner. The entire allegations are mainly against the first accused who was the driver of the lorry. The allegations to constitute Sections 308 and 353 of IPC are not there against the petitioner. The petitioner has been roped with the aid of Section 109 of IPC. The petitioner has no criminal antecedents. Considering the allegations levelled against the petitioner, his custodial interrogation does not appear to be necessary. For all these reasons, the petitioner is entitled to pre-arrest bail on conditions. In the result, the application is allowed on the following conditions:-

(i) The petitioner shall be released on bail in the event

of his arrest on executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum each to the satisfaction of the arresting officer/investigating officer, as the case may be.

(ii) The petitioner shall fully co-operate with the ..5.. investigation, including subjecting himself to the deemed police custody for the purpose of discovery, if any, as and when demanded.

(iii) The petitioner shall appear before the investigating

officer between 10.00 a.m and 11.00 a.m on every Saturday until further orders. The petitioner shall also appear before the investigating officer as and when required by him.

(iv) The petitioner shall not commit any offence of like nature while on bail.

(v) The petitioner shall not make any attempt to

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

(vi) The petitioner shall not leave State of Kerala without the permission of the trial Court. Sd/- DR. KAUSER EDAPPAGATH JUDGE ds 30.04.2021

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