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Nizam vs State of Kerala

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Court : Kerala

Decided On : Sep-16-2021

Judge : Honourable Mrs. Justice M.R.Anitha

Appeal No. : Bail Appl./6278/2021

Appellant : NIZAM

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE M.R.ANITHA THURSDAY, THE 16TH DAY OF SEPTEMBER 2021 / 25TH BHADRA, 1943 BAIL APPL. NO. 6278 OF 2021 CRIME NO.1084/2021 OF Kadakkal Police Station, Kollam PETITIONER/ACCUSED (A1) NIZAM AGED 43 YEARS S/O.BASHEER, PANAYIL VEEDU, ELAMPAZHANNOOR MURI, KADAKKAL VILLAGE, KOLLAM DISTRICT. BY ADVS. K.V.ANIL KUMAR SWAPNA VIJAYAN RESPONDENT/COMPLAINANT STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031. THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 13.9.2021, THE COURT ON 16.09.2021

DELIVERED THE FOLLOWING:

ORDER

Dated : 16th September, 2021

1. Petitioner is the 1st accused in Crime No.1084/2021 of Kadakkal Police station registered for the offence punishable under Sections 294 (b), 354, 354(A), 354(B), 323 r/w 34 IPC.

2. It is alleged that on 5.8.2021 at about 6.00 pm when the de facto

complainant was standing near the ration shop at Elamapazhannor Kavu Junction, accused Nos.1 and 2 came in a car and abused her in filthy words and the petitioner slapped at her cheek and assaulted his son while preventing the attack and the 2 nd accused caught hold at her abdomen and chest and removed her shawl and outraged her modesty.

3. According to the learned counsel for the petitioner, petitioner is

totally innocent of the allegations made against him. Actually he arranged a job visa to the mother of the de facto complainant and she went abroad ,but without joining the job, she returned and demanded the entire expenses of the visa processing. On the date of incident, the de facto complainant's husband restrained the petitioner's wife Sajina in a public road and abused her in filthy language and that was questioned by the petitioner. Out of which the husband of de facto complainant brutally attacked the petitioner and his brother-in-law. Petitioner sustained severe head injury and admitted in the Medical College hospital and he had undergone treatment at Medical College hospital, Thiruvananthapuram. After the above incident, under the influence of local political party, this false case has been registered against him .The 2nd accused has already been arrested and remanded and as per the allegations, only the offence punishable under Sections 323 and 294(b) alone will lie against

the petitioner. Apprehending arrest petitioner approaches this Court.

4. The learned Public Prosecutor seriously objects in considering the petition and he also produced copy of the FIR and FIS and connected records, along with the remand report with respect to the 2nd accused.

5. In the report filed by the Sub Inspector it has been stated that the

investigation made so far revealed the commission of offence by the petitioner. It is also stated that the vehicle in which the accused persons were travelling has to be seized and if bail is granted there is possibility of accused persons attacking the de facto complainant and threatening the witnesses.

6. From the side of the petitioner, he has produced copy of the

outpatient records issued from Medical College Hospital, Thiruvananthapuram dated 5.8.2021 which would show that on the said day at about 20.11 hours, he had been examined by the doctor with the alleged history of assault by three known people at 7 pm on 5.8.2021 at Elampazhannor Kavu junction with iron rod. On examination, lacerated wound 4.5x3x2.5 cm over right paretal region with bleeding has been noted. Annexure-A2 is the further examination by the doctor on 6.8.2021. It would show that C.T.scan was taken and swelling on the left side front sygoma(not clear) region also has been noted.

7. Petitioner has got a specific contention that his injuries were very

serious and due to COVID-19 pandemic he did not get admitted in the hospital and he was undergoing follow up treatment. Prima facie the Medical records produced from the side of the petitioner would show that he has sustained injury on vital part of the body on the very same day. Prosecution could not explain the injury sustained by the petitioner. The only non bailable offence attributed against the petitioner is 354 and 354(A)IPC. Petitioner has also allegation with regard to visa transaction with the mother of the de facto complainant and the subsequent dispute

in connection with the same. Custodial interrogation may not be necessary in this case. So in view of the totality of the facts and circumstances especially in view of the injury sustained by the petitioner, I am of the view that pre arrest bail can be granted to the petitioner on the following conditions : i) The petitioner shall be released, on his executing bond for a sum of Rs.35,000/- (Rupees thirty five thousand only) in the event of his arrest, with two sureties each for the like sum to the satisfaction of the court having jurisdiction. ii) The petitioner shall make himself available for interrogation by the Police Officer as and when required. He shall co operate with the investigation. iii) The petitioner shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence. iv) The petitioner shall not commit any offence while on bail. vi) If any of the above conditions are violated by the petitioner, the jurisdictional court will be at liberty to cancel the bail in accordance with law. Sd/- M.R.Anitha, Judge

Mrcs/14.9.

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