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**Vavachan a vs State of Kerala**

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**SooperKanoon Citation** : sooperkanoon.com/1696701

**Court** : Kerala

**Decided On :** May-14-2021

**Judge** : Honourable Mr.Justice Ziyad Rahman a.a.

**Appeal No.** : Bail Appl./7661/2020

**Appellant** : Vavachan a

**Respondent** : State of Kerala

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. FRIDAY, THE 14TH DAY OF MAY 2021 / 24TH VAISAKHA, 1943 Bail Appl..No.7661 OF 2020 CRIME NO.547/2020 OF VAGAMON POLICE STATION, IDUKKI PETITIONERS:

1 VAVACHAN A,AGED 59 YEARS, S/O.AYYANKUNJU, KALLUKULAM VEEDU, VAGAMON, VAGAMON P.O, PIN-685 503. 2 ASHAMOL M A,AGED 35 YEARS, W/O.JOHNSON, MANAKKAPADIYIL HOUSE, VAGAMON P.O. 3 AJAYAN,AGED 57 YEARS, MANAKKAPADIYIL HOUSE, VAGAMON P.O. 4 ATHULJITH @ KICHU, AGED 20 YEARS, S/O.VAVACHAN, KALLUKULAM VEEDU, VAGAMON P .O 5 JOHN

DOGLUS @ JOHNSON,AGED 37 YEARS, JOHNSON VILLA, VAGAMON P.O. BY ADV. SRI.C.J.VARGHESE VINU

RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA 682 031. 2 JOMON, AGED 45 YEARS, S/O.M.K.DAS, MALANIRAPPEL, VAGAMON P.O., PIN-685 503. R1 BY PUBLIC PROSECUTOR SRI. K.A.ANAS THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14.05.2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: B.A.7661/2020 2

## ORDER

Dated this the 14th day of May, 2021 ... This is an application for anticipatory bail filed under Section 438 of the Code of Criminal Procedure. Petitioners are accused in Crime No.547 of 2020 of Vagamon Police Station.

2. The offences registered against them are under Sections 143, 147, 148, 149, 452, 323, 324, 294b of IPC and also under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. The allegation against the petitioners is that the petitioners

formed themselves into an unlawful assembly and trespassed into the shop of the de facto complainant and assaulted the de facto complainant and thereby committed the offence.

4. Heard both sides and perused records.

5. Learned counsel for the petitioners submitted that they are

innocent of all the allegations and they were falsely implicated in the said case. With regard to the incorporation of the offences under the SC/ST (Prevention of Atrocities) Act, it is contended by the petitioner that all the accused persons are relatives and they themselves belongs to SC community. On the other hand, the learned Public Prosecutor opposed the application and also pointed out that as B.A.7661/2020 3 offence under the provisions of the SC/ST Prevention of

Atrocities Act is incorporated, application for anticipatory bail is not maintainable.

6. It is true that there is a prohibition in entertaining an

application for anticipatory bail in respect of an offence under the provisions of the SC/ST (Prevention of Atrocities) Act. However, it is settled position as per the judgment reported in Prathvi Raj Chauhan v. Union of India and Other [2020(1) KLT 810], wherein the Honble Supreme Court was pleased to hold that, if the acts alleged do not prima facie make out a case for the offence under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, this Court will have inherent power to grant anticipatory bail. Therefore, the question is whether a prima facie case has been made out from the allegations raised in this case. It is the specific case of the counsel for the petitioners, that all of the accused persons are belonging to SC community and therefore, the offence under the said

Act is not attracted. In this case, earlier, it was reported by the Investigating Officer that the accused 1 and 5 alone are belonging to SC community. However, it was pointed out that the other accused persons are also relatives of A1 and A2. In the above circumstances, as there was some confusion in the caste identity of the accused persons, this Court sought clarification from the Investigating Officer as per order dated 25.03.2021 and directed the Investigating Officer to submit a written report in respect of the same. On the basis of the

B.A.7661/2020 4 same, the Investigating Officer has placed a report dated 30.03.2021 clarifying those aspects, as sought for by this Court. On going through the said report, it can be seen that, A1 and A5 are belonging

to Scheduled Caste community, namely Hindu Cheramar. With regard to A2, A3 and A4 are concerned, it is reported that they are belonging to Christian Cheramar. Therefore, according to the report of investigating officer, A2 to A4 are not belonging to SC community. It is pointed out by the learned counsel for the petitioners that all the accused persons are close relatives, which fact is not disputed. In the above circumstances, this court is of view that, even though technically the above persons, i.e. A2, A3 and A4 cannot be treated as SC

community, but when considering the question of commission of offence under this Act and the motive behind the commission of the alleged acts which are allegedly constituting, the offence under SC/ST (Prevention of Atrocities) Act, the fact of identity or inherent connection of the Accused Nos 2 to 4 with the Cheramar community, is a crucial matter to be taken into consideration. Allegations of this nature i.e calling the caste name of defacto complainant by a person, who himself is identified as part of the community coming under SC category on account of his blood relations with the persons belonged to the said community, is highly improbable. Further, two out of the accused persons themselves were admittedly belonged to the Schedule Caste Category and are close relatives of the remaining

B.A.7661/2020 5 accused persons. Therefore, the allegation that they have called the de facto complainant with caste name can be swallowed only with a pinch of salt.

7. It is also reported that there are several disputes between the parties including the disputes concerning with their civil rights in

respect of their properties and therefore, chances of ma

However, all the above matters are to be investigated in detail and to be revealed in such an investigation. On perusal of entire materials available as of now, this court is of the view that, there is no room for allegations for attracting the provisions of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act. Therefore, this court

does not find any embargo in entertaining this application, in the light of the principles laid down by the Honourable Supreme Court

## judgment mentioned above. Further, this court also issued notice to

the defacto complainant who is impleaded as the 2nd respondent, but despite service of notice, he had chosen not to appear.

8. Considering the totality of the circumstances, this Court is of the view that, in the peculiar facts and circumstances of the case, this application can be entertained and the same can be allowed as well. While considering this application I have also taken into B.A.7661/2020 6 consideration the situation now prevailing in the State on account of the out break of COVID-19.

9. On account of the alarming situation prevailing in the State

owing to wide spread of COVID-19 Pandemic, the Government is taking measures to de-congest the prisons so as to enable the authorities concerned to maintain social distancing within the prisons. As part of the said initiative, they have issued

G.O(Rt)No.1311/2021/HOME dated 05/05/2021, directing the authorities concerned to grant parole to eligible inmates of the Prisons in the State, subject to the compliance of Rule 397(L) of the Kerala Prisons and Correctional Services (Management) Rules 2014. The Honourable Supreme Court also, vide order dated 7.05.2021 in Suo Motu Writ Petition (C) No 1/2020 issued various directions for minimizing the strength of inmates in prisons. In my view, the above aspects are also very much relevant while considering this bail application.

10. In the above circumstances, this application is allowed subject to following conditions:

(i) The petitioners shall surrender before the Investigating

officer, within a period of two weeks from today, for subjecting themselves for interrogation. However, while computing the period as mentioned above, the period of lock down, if any, declared by the Government owing to COVID-19 pandemic can be excluded; B.A.7661/2020 7

(ii) After interrogation, the petitioners shall be released on

bail, on the very same day of surrender upon the petitioners executing a bond for Rs 1,00,000/- with two solvent sureties each for the like sum, to the satisfaction of the investigating officer;

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

(iv) The petitioners shall appear before the investigating

officer between 10.00 a.m and 11.00 a.m on every Wednesday until further orders. However, this condition shall stand suspended during the period of lock down declared by the Government owing to COVID-19 pandemic;

(v) The petitioners shall also appear before the investigating officer as and when required by him;

(vi) The petitioners shall not commit any offence of like nature while on bail;

(vii) The petitioners 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; (viii) The petitioners shall not leave State of Kerala without the permission of the trial Court. Sd/- ZIYAD RAHMAN A.A. JUDGE DG

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