

**Mohammed Kunju Vs. State of Kerala, Represented by the Public Prosecutor, Ernakulam and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/946738](http://sooperkanoon.com/946738)

**Court :** Kerala

**Decided On :** Jan-13-2012

**Judge :** P.Q. Barkath Ali

**Appeal No. :** Crl. M.C. No. 610 of 2007 (A)

**Appellant :** Mohammed Kunju

**Respondent :** State of Kerala, Represented by the Public Prosecutor, Ernakulam and Others

**Judgement :**

1. The short question, which arises for consideration in this petition, is whether the de facto complainant can challenge the order of anticipatory bail granted to the accused persons by the Sessions Court under section 482 of the Code of Criminal Procedure.

2. This is a petition filed under section 482 of the Code of Criminal Procedure by the de-facto complainant in Crime No.25 of 2007 of Aryanad Police Station, which is now pending before the Judicial Magistrate of the First Class-I, Nedumangad, to cancel the anticipatory bail granted to the accused persons in that case by Annexure-A2 order.

3. The accused persons were charged for offences punishable under sections 341, 323, 324, and 326 read with section 34 IPC on the allegation that on December 30, 2006 at about 8.45 p.m. they assaulted the de-facto complainant and caused grievous injuries. The learned Sessions Judge by the impugned order dated February 7, 2007 granted anticipatory bail to the accused. The de-facto complainant has now challenged the said order stating that the lower court should not have granted anticipatory bail to the accused.

4. Heard the learned counsel for the petitioner, the learned Public Prosecutor and the learned counsel for respondents 3 to 5/accused persons.

5. The counsel for the petitioner argued that the Sessions Judge should not have granted anticipatory bail to the accused persons as they are notorious criminals of that locality. The learned Public Prosecutor on the other hand would support the impugned order of the Sessions Judge.

6. The Petitioner who is de facto complainant has filed this petition under section 482 Cr.P.C. But there is a specific provision of section 439 Cr.P.C. for grant as well as cancellation of bail. Therefore, High Court cannot normally exercise its inherent jurisdiction to cancel bail, where a specific jurisdiction permits it to specifically cancel bail. The inherent power is for the contingencies other than those specifically provided by the Code. The Apex Court has held in Aslam Babalal Desai V. State of Maharashtra (AIR 1993 SC 1) that even an order for release on statutory bail, under section 167 of Cr.P.C. cannot be cancelled but by resorting to the procedure under section 437(5) or section 439(2) of Cr.P.C. Therefore, in the light of the principles laid down in the above decision, I am of the view that the petitioner has to approach the Sessions Court under subsection (2) of Section 439 of Cr.P.C. for cancellation of the anticipatory bail granted to the accused persons by the impugned order.

7. Thus, the petition is dismissed. The petitioner is at liberty to approach the Sessions Court under sub section (2) of section 439 of Cr.P.C. for cancellation of the anticipatory bail granted to the accused persons by the impugned order.