

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 13TH DAY OF JULY 2016/22ND ASHADHA, 1938

Bail Appl..No. 5039 of 2016 ()

AGAINST THE ORDER/JUDGMENT IN CRMC 954/2016 of D.C.& SESSIONS
COURT,MANJERI DATED
CRIME NO. 315/2016 OF THENHIPALAM POLICE STATION , MALAPPURAM

PETITIONER(S) /ACCUSED:

1. K.C.MOIDEEN
S/O.POCKER HAJI, AGED 55 YEARS,
KUZHIKKATTIL CHOLAKKAL,PERUVALLUR (PO) ,
MALAPPURAM DISTRICT
2. ABDUL KABEER
S/O. KUNHAVA,AGED 32 YEARS,
KUZHIKKATTIL CHOLAKKAL,PERUVALLUR (PO) ,
MALAPPURAM DISTRICT
3. K.C MOIDEEN KUTTY
S/O. KUNHAVA, AGED 37 YEARS,
KUZHIKKATTIL CHOLAKKAL,
PERUVALLUR (PO) ,
MALAPPURAM DISTRICT

BY ADVS.SRI.P.K.MOHAMED JAMEEL
SRI.UMMER FAROOK AYANIYAD

RESPONDENT(S) /COMPLAINANTS:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA,ERNAKULAM - 682 031.
2. THE SUB INSPECTOR OF POLICE
TENHIPPALAM POLICE STATION
TENHIPPALAM P.O. ,
MALAPPURAM DIST- 673 636.

BY PUBLIC PROSECUTOR SMT. LALIZA T.Y.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
13-07-2016, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ds

P.UBAID, J.

B.A.No. 5039 of 2016

Dated this the 13th day of July, 2016

ORDER

The petitioners herein seek pre-arrest bail under Section 438 of the Code of Criminal Procedure on the apprehension of arrest and custodial harassment in connection with Crime No. 315 of 2016 of the Tenhippalam Police Station, registered under Sections 341, 323, 324, 308 and 506(ii) read with Section 34 of the Indian Penal Code.

2. The prosecution case is that the petitioners herein assaulted the defacto complainant and his brother at about 4.30 p.m. on 17.6.2016, in connection with some other dispute, and inflicted injuries on their body with weapons, with the knowledge of consequence that the injuries may cause death. The police report shows that there is a counter case against the defacto complainant and others as Crime No. 316 of 2016 under Sections 341, 323, 324, 427 and 506 (ii) of IPC.

3. This application for pre-arrest bail is opposed by the learned Public Prosecutor on the ground that investigation is at the preliminary stage, that custodial interrogation of the petitioners is absolutely necessary as part of investigation, and that if the accused are now released, they will definitely obstruct the proper and effective investigation.

4. On a perusal of the case diary, I find that the defacto complainant and his brother had not sustained any serious injury that may cause death in the ordinary course. What is at the most revealed is the offence under Section 324 of IPC. It appears that Section 308 of IPC was incorporated in the FIR by the Police on the basis of some hypothetical statement. It is not known whether the accused in the counter case are on bail. There also, the main offence alleged is under Section 324 of IPC as revealed by the Police report. In the above situation where persons on both sides had sustained injuries in the alleged incident,

it would be inappropriate to deny bail to the petitioners. The allegation under Section 308 of IPC does not have any solid basis.

5. In the result, this petition for pre-arrest bail is allowed. The petitioners are ordered to be released on bail on their executing a bond with two solvent sureties for ₹25,000/- (Rupees Twenty Five Thousand only) each to the satisfaction of the arresting officer or the learned Magistrate having jurisdiction, in case of their arrest in connection with Crime No. 315 of 2016 of the Tenhippalam Police Station. Bail is granted on condition that;

a) The petitioners shall report before the Investigating Officer between 10 a.m. and 11 a.m. on all Mondays for a period of two months.

b) The petitioners shall not leave the limits of Tenhippalam Police Station for a period of two months.

c) The petitioners shall not in any manner influence or intimidate the material witnesses, or they shall not have any contact with the material witnesses directly or over telephone or otherwise.

Sd/-
P.UBAID
JUDGE

ds

//True copy//

P.A. to Judge