

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 23RD DAY OF JANUARY 2024 / 3RD MAGHA, 1945

BAIL APPL. NO. 10951 OF 2023

CRIME NO.703/2023 OF Mannar Police Station, Alappuzha

PETITIONER/S:

- 1 ABHIJITH S,
AGED 21 YEARS
S/O SUNIL, PUTHENPURA PADEETTATHIL,
PERINGILIPPURAM, CHENGANNUR, ALAPUZHA DISTRICT,
PIN - 689426
- 2 NANDHU S,
AGED 19 YEARS
S/O SURESH (LATE), PERATHARAYIL, ENNAKADU P.O,
CHENGANNUR, ALAPUZHA DISTRICT, PIN - 689426
BY ADVS.
T.P.PRADEEP
P.K.SATHEES KUMAR
MINIKUMARY M.V.
R.K.PRASANTH
JIJO JOSEPH

RESPONDENT/S:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031

OTHER PRESENT:

SMT.SEETHA.S, SENIOR PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
23.01.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.S.DIAS,J

=====

Bail Application No10951 of 2023

Dated this the 23rd day of January, 2024

ORDER

The application is filed under Section 438 of the Code of Criminal Procedure, 1973 (*'Code', for short*), for an order of pre-arrest bail.

2. The petitioners are the accused 1 and 2 in Crime No.703/2023 of the Mannar Police Station, Alappuzha, registered against them for allegedly committing the offences punishable under Sections 294(b), 323, 324, 326 read with Sec.34 of the Indian Penal Code, 1860, (*'IPC', for short*).

3. The concise case of the prosecution is that: around 5.15 p.m on 18.8.2023, while the defacto complainant was

talking with his friend over phone and standing on the road, the first accused went there and abused him in vulgar language and then kicked him down along with his motor cycle. When the defacto complainant fell down, the accused removed his helmet and hit him on his head causing grievous injuries including a fracture. When the defacto complainant attempted to escape, the accused fisted him on his head and chin and the second accused kicked him. Thus, the accused have committed the above offences.

4. Heard; Sri. T.P Pradeep, the learned counsel appearing for the petitioners and Smt.Seetha.S, the learned Senior Public Prosecutor appearing for the respondent.

5. The learned counsel for the petitioners submitted that the petitioners have been falsely implicated in the crime. Sec.326 has been added only to deny bail to the petitioners. The petitioners are youth and have no criminal antecedents.

The prosecution allegation that the petitioners caused a fracture to the defacto complainant with a helmet is unbelievable. A helmet, by no stretch of imagination, is not a weapon as defined under Sec.320 of the Indian Penal Code. The petitioners are willing to co-operate with the Investigating Officer and abide by any stringent condition that may be imposed by this Court. Hence, the application may be allowed.

6. The learned Public Prosecutor strenuously opposed the application. She contended that the investigation is at its nascent stage. The custodial interrogation of the petitioners is necessary and recovery is to be effected. The petitioners have caused grievous injuries to the defacto complainant, which is evident from the report of the Investigating Officer wherein the treatment certificate of the defacto complainant is produced. The defacto complainant was admitted as

inpatient from 18.8.2023 to 22.8.2023 in the Government Medical College Hospital, Kottayam. He had sustained a head injury in the frontoparietal area and his frontal bone was fractured. Therefore, the petitioners have committed a heinous offence and they may not be granted an order of pre-arrest bail.

7. In **Siddharam Satlingappa Mhetre v. State of Maharashtra** [(2011) 1 SCC 694] the Hon'ble Supreme Court has held as follows:

111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail: (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

126. We deem it appropriate to reiterate and assert that discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances

justifying its exercise. Similarly, the discretion vested with the court under Section 438 CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

8. In **Jai Prakash Singh v. State of Bihar and another**, [(2012) 4 SCC 379] the Hon'ble Supreme Court has held that, an order of pre-arrest bail being an extra ordinary privilege, should be granted only in exceptional cases. The judicial discretion conferred upon the Courts has to be properly exercised, after proper application of mind, to decide whether it is a fit case to grant an order of pre-arrest bail. The court has to be prima facie satisfied that the applicant has been falsely enroped in the crime and his liberty is being misused.

9. On an anxious consideration to the materials placed on record, particularly taking note of the nature, gravity, and seriousness of the offence alleged against the petitioners and

after perusing the treatment certificate, which shows that the defacto complainant had sustained a head injury including a frontal bone fracture, that the custodial interrogation of the petitioners is necessary, that the investigation in the case is at its nascent stage and recovery is to be effected, I am of the definite view that the petitioners are not entitled to invoke the extra ordinary jurisdiction of this Court under Sec.438 of the Code. Therefore, I hold that this is not a fit case to grant an order of pre-arrest bail. Consequently, the bail application is dismissed.

10. Nonetheless, I direct that, if the petitioners surrender before the Investigating Officer within 10 days from today, they shall be interrogated and, thereafter, be produced before the jurisdictional Court on the date of surrender itself. Then, if the petitioners move an application for bail, the jurisdictional Court shall, untrammelled by any observations

in this order, consider the bail application on its merits and as expeditiously as possible. If the petitioners do not surrender before the Investigating Officer as directed above, the Investigating Officer shall be free to arrest the petitioners as if no order has been passed in this case.

sd/-

C.S.DIAS,JUDGE

Sks/
23.1.2024

APPENDIX OF BAIL APPL. 10951/2023

PETITIONER ANNEXURES

Annexure A1	A TRUE COPY OF THE FIR NO. 703/2023 OF MANNAR POLICE STATION DATED 19/08/2023
Annexure A2	A TRUE COPY OF THE ORDER PASSED BY THE COURT OF SESSION, ALAPPUZHA IN CRL. MP NO. 4247/2023 DATED 16/10/2023