



2024/KER/16831

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 29<sup>TH</sup> DAY OF FEBRUARY 2024/10TH PHALGUNA, 1945

BAIL APPL. NO. 1269 OF 2024

CRIME NO.27/2023 OF ALOOR POLICE STATION, THRISSUR

PETITIONER/ACCUSED:

BIPIN SUNNY  
AGED 29 YEARS  
S/O. SUNNY, MURIYAD, ALOOR P S,  
THRISSUR RURAL.  
PERMANENTLY RESIDING AT PARIPPIL ETTATHOTTU,  
ARIVILANJAPOYIL, JOSEGIRI P.O.,  
ALAKODE, KANNUR DISTRICT, PIN - 670511

BY ADVS.  
JOBY CYRIAC  
KURIAN K JOSE

RESPONDENT/COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682031
- 2 THE STATION HOUSE OFFICER  
ALLOOR POLICE STATION, THRISSUR DISTRICT,  
PIN - 579303
- 3 GNANAPRAKASAM J  
HOUSE NO.7/338, MURIYAD P.O.,  
THRISSUR DISTRICT,  
PIN - 680683

SRI.DENNY K DEVASSY, SR.PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
29.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



**CR**

**ORDER**

Dated this the 29<sup>th</sup> day of February, 2024

This is the third application for anticipatory bail filed by the petitioner, who is accused in crime No.27/2023 of Aloor police station, Thrissur.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. I have perused the case diary as such along with the report placed by the learned Public Prosecutor.

4. The prosecution case is that on 07.01.2023 at about 11 am, when the defacto complainant reached Muriyad, the accused herein wrongfully restrained the defacto complainant and attempted to prod on his abdomen with intention to commit culpable homicide, not amounting to murder. Since the defacto complainant evaded, the same caused abrasion on the abdomen. Thereafter, the accused again stabbed the defacto complainant and the same caused



deep injury on his right wrist. On this premise, the prosecution alleges commission of offence punishable under Sections 341, 324 and 308 of IPC.

5. The learned counsel for the petitioner, who canvasses anticipatory bail for the third time, after dismissal of earlier bail applications, viz., B.A.No.269/2023 as per order dated 02.03.2023 and B.A.No.4416/2023 dated 21.07.2023, moved before the Apex Court and sought the relief of anticipatory bail. Annexure D is the order of the Apex Court dated 20.11.2023 in Special Leave to Appeal (Crl.) No.12934/2023. The order of the Apex Court reads as under:

*“After some arguments, learned counsel for the petitioner seeks to withdraw the Special Leave Petition.*

*Permission granted.*

*The Special Leave Petition is dismissed as withdrawn.*

*The petitioner has prayed for and is granted two weeks' time to surrender and apply for regular bail which will be considered by the trial court on its own merits.”*



6. Going by the order, it is discernible that the petitioner sought permission to withdraw the Special Leave Petition, after arguing for some time and sought two weeks' time to surrender and apply for regular bail, which would be considered by the trial court on merits. The prayer was allowed by the Apex Court.

7. According to the learned counsel for the petitioner, as per Annexure B, produced along with this petition, offence under Section 325 of IPC has been deleted and Section 324 of IPC is added and the same is the change in circumstances.

8. Whereas the learned Public Prosecutor zealously opposed grant of bail and pointed out that this petition is unwarranted and the same has been filed to avoid surrender within two weeks' time granted by the Apex Court as per order dated 20.11.2023. The learned Public Prosecutor also submitted that going by the nature of allegations dealt in detail in the previous orders, the petitioner does not deserve



anticipatory bail, since arrest, custodial interrogation and recovery of weapon are inevitable part of the investigation.

9. In fact, the earlier anticipatory bail application filed by the petitioner was dismissed after hearing the defacto complainant also, as averred in paragraph 7 of the order in B.A.No.269/2023, which is as under:

*“7. The learned Public Prosecutor also expressed the view of the learned counsel appearing for the defacto complainant pointing out the necessity of custodial interrogation to have recovery of weapon, while strongly opposing grant of anticipatory bail.*

*8. While addressing the rival contentions, I have perused the FIS and the FIR in this crime (Crime No.27/2023 of Aloor police station). In this crime, the specific allegation is that at 11 am on 07.01.2023, the accused herein reached Muriyad and wrongfully restrained the defacto complainant and attempted to cause jab injury on his abdomen with intention to cause culpable homicide not amounting to murder. Since the defacto complainant evaded the attack, he sustained injuries on his right hand and injury on the abdomen.*

*9. The relevant records pertaining to this crime produced by the learned Public Prosecutor would*



*contain the copy of wound certificate prepared at 1 pm on 07.01.2023 by the causality Medical Officer, Kodakara Santhi Hospital. In the wound certificate, it is stated that the defacto complainant approached the hospital with alleged history of assault by known person. On clinical observation, the following injuries were noted.*

- 1. Stab wound over Rt epicondyle region 4x1x1 cm*
- 2. Stab wound over Rt above draconian region 4x1x1cm*
- 3. Wound over right palm and on 3<sup>rd</sup> and 4<sup>th</sup> finger.*
- 4. Abrasion over right arm and abrasion over right side of abdomen anterior.*

*10. Though it is submitted by the learned counsel for the petitioner that this crime was registered as a counterblast against crime No.26/2023, it is discernible from the FIR in crime No.26/2023 otherwise. On perusal of the recitals in the FIR in the present crime, the time of occurrence is stated as 11 am. Whereas, in crime No.26/2023, the time of occurrence is stated as 12 noon. If so, prima facie, it appears that the occurrence narrated in this crime is one occurred on 11 am on 07.01.2023 and the occurrence in crime No.26/2023 registered on the basis of statement recorded by the petitioner herein is at 12 noon. It is true that police registered first crime (crime No.26/2023) before registering crime No.27/2023. However, for the*



*said reason, it cannot be held that the occurrence in the present crime is connected with other occurrence since there is time gap of 1 hour between the two occurrences. It is discernible that difference of opinion between two groups has been prevailing in relation to a matter whereby some members of 'Muriyad Zion Sabha' left the Sabha and for which crime No.21/2023 was registered. That apart, on perusal of FIR in crime No.26/2023, no serious allegations could be gathered since the offences are all bailable in nature (offences under Sections 144, 148, 342, 323, 324, 206 and 427 r/w Section 149 of IPC).*

11. *The crucial question to be considered in this case is whether the prosecution allegation as to commission of offences under Sections 341, 325 and 308 of IPC is made out. Here, the wound certificate along with the statement of the defacto complainant would go to show that the accused herein assaulted him and when he evaded, the same caused injuries described hereinabove after referring the wound certificate. Therefore, this occurrence cannot be read along with other occurrences and the petitioner's complicity in this occurrence is very well established, prima facie as per the prosecution case. In such a case, arrest and custodial interrogation of the petitioner are absolutely necessary for the purpose of recovery of*



BAIL APPL. NO. 1269 OF 2024

8

*the weapon alleged to be used by the petitioner.  
Therefore, this is not a fit case to grant anticipatory bail.”*

10. As things stand now, this is the third anticipatory bail application filed by the petitioner before this Court even after dismissal of two earlier applications filed by the same petitioner by this Court and dismissal of the said plea by the Apex Court with permission to surrender within two weeks and seek regular bail. In the decision in **Suresh v. State of Kerala** reported in **2023(4) KLT 696 : 2023 (5) KHC 259**, this Court, after referring earlier decisions of the three Bench of the Apex Court in **Kalyan Chandra Sarkar v.Pappu Yadav** reported in **2005 (2) KLT SN 3 : AIR 2005 SC 921**, and the decision in **Vineeth v. State of Kerala** reported in **2015 (5) KHC 224** and the Full Bench decision of the Calcutta High Court in **Sudip Sen v. State of W.B.** reported in **2010 CrI.LJ 4868**, held that successive bail applications without showing any change in the fact situation or circumstance requiring invocation of the extraordinary jurisdiction of the High Court





as well as Sessions Court under Section 438 of Cr.P.C. could be regarded as an abuse of the process of the court.

11. In the decision in **Muhammed Ziyad v. State of Kerala** reported in **2015 (4) KHC 748 : 2015 (4) KLT SN 135: ILR 2015 (4) Ker.1128**, this Court held that in order to prevent abuse of process of court by filing successive bail applications before different Benches, successive bail applications on the same subject once filed to be placed before the same Judge who disposed of the earlier application.

12. In the decision in **Kusha Duruka v. State of Odisha**, reported in **2024(1) KHC 389 (SC)**, the Apex Court issued slew of directions to deal with bail application and the same are as under:

*“(1) Details and copies of order(s) passed in the earlier bail application(s) filed by the petitioner which have been already decided.*

*(2) Details of any bail application(s) filed by the petitioner, which is pending either in any Court,*



*below the Court in question or the higher Court, and if none is pending, a clear statement to that effect has to be made.*

*This Court has already directed vide order passed in **Pradhani Jani's** case (supra) that all bail applications filed by the different accused in the same FIR should be listed before the same Judge except in cases where the Judge has superannuated or has been transferred or otherwise incapacitated to hear the matter. The system needs to be followed meticulously to avoid any discrepancies in the orders.*

*In case it is mentioned on the top of the bail application or any other place which is clearly visible, that the application for bail is either first, second or third and so on, so that it is convenient for the Court to appreciate the arguments in that light. If this fact is mentioned in the order, it will enable the next higher Court to appreciate the arguments in that light.*

*(3) The registry of the Court should also annex a report generated from the system about decided or pending bail application(s) in the crime case in question. The same system needs to be followed even in the case of private complainants*



*as all cases filed in the trial Courts are assigned specific numbers (CNR No.), even if no FIR number is there.*

*(4) It should be the duty of the Investigating Officer / any officer assisting the State Counsel in Court to apprise him of the order(s), if any, passed by the Court with reference to different bail applications or other proceedings in the same crime case. And the counsel appearing for the parties have to conduct themselves truly like officers of the Court.”*

13. It is noticed that even though as per condition No. (1), it has been provided that details and copies of order(s) passed in the earlier bail application(s) filed by the petitioner which have been already decided also to be furnished. In the present case, the copies of the earlier bail orders not produced. Therefore, the Registry is directed to follow the directions issued in **Kusha Duruka's** case (*supra*) without fail and shall not number bail applications which are being filed without complying the directions in **Kusha Duruka's** case



(*supra*) hereafter.

14. Now the petitioner pointed out deletion of Section 325 of IPC and addition of Section 324 of IPC as a change in circumstances and for which he has placed reliance on Annexure B, copy of report dated 08.01.2023. It is relevant to note that at the time when this Court dismissed earlier bail application on 02.03.2023, this aspect also was noticed by holding that there are sufficient materials to find commission of offence under Section 308 of IPC. Therefore, the present petition is absolutely an abuse of process of court in the facts of the case discussed and which would deserve dismissal. In fact, imposition of cost also to be considered, but for the time being, I avoid imposition of cost.

15. It is shocking to note that despite having dismissed two bail applications and the petitioner failed to surrender within the time granted by the Apex Court as per order dated 20.11.2023, the Investigating Officer not so far proceeded against the petitioner who failed to surrender. The



BAIL APPL. NO. 1269 OF 2024

13

same shows callous negligence on the part of the Investigating Officer in investigating a serious crime. Therefore, the Investigating Officer is directed to expedite the investigation as per law without fail.

In the result, this anticipatory bail application stands dismissed.

The petitioner is directed to surrender before the Investigating Officer within a period of seven days from today and on failure to do so, the Investigating Officer shall proceed with the arrest of the petitioner in accordance with law to effectuate investigation.

**Sd/-  
A. BADHARUDEEN  
JUDGE**

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