

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 4TH DAY OF APRIL 2023 / 14TH CHAITHRA, 1945

BAIL APPL. NO. 2227 OF 2023

CRIME NO.271/2023 OF KOTTIYAM POLICE STATION, KOLLAM

PETITIONER/ACCUSED NO.2:

NISHAD H
AGED 31 YEARS, S/O HAREES,
R/O VILAYIL PUTHEN VEEDU, THAZUTHALA,
KOTTIYAM P.O, KOLLAM, KERALA, PIN - 691571
BY ADVS.
HARIKRISHNAN M.S.
SHAKTHI PRAKASH
K.DHRUV KUMAR

RESPONDENT/STATE AND COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
PIN - 682031
- 2 THE STATION HOUSE OFFICER
KOTTIYAM POLICE STATION,
KOLLAM, PIN - 691571
- 3 NAZEER RAHIM (SOUGHT TO BE IMPEADED)
S/O RAHM M, R/O PAVITHRAM, AKSHARA NAGAR 54A,
THIRUMULLAVARAM P.O., KOLLAM (SOUGHT TO BE IMPEADED)
BY ADVS.
PUBLIC PROSECUTOR
VISHNU VIJAYAN
T V NEEMA - SR PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
04.04.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R"

ORDER

Dated this the 4th day of April, 2023

This is a petition filed under Section 439 of the Code of Criminal Procedure, seeking bail and the petitioner is the 2nd accused in crime No.271/2023 of Kottiyam Police Station, Kollam, where the prosecution alleges commission of offences punishable under Section 294(b), 323, 324, 307 r/w 34 of IPC.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor and the learned counsel representing the counsel for the defacto complainant. Perused the relevant materials form part of the case diary, placed by the learned Public Prosecutor.

3. The prosecution case is that, at about 10.30 pm on 21.02.2023, due to previous animosity accused Nos. 1 and 2 abused and assaulted the defacto complainant with intention to commit his murder. Accordingly, the defacto complainant was brutally manhandled by accused Nos. 1 and 2 and in consequence thereof the defacto complainant sustained multiple

injuries including serious fracture, though he survived. On this premise the prosecution alleges commission of the above offences.

4. While pressing for grant of regular bail to the petitioner, who has 14 criminal antecedents prior to this occurrence including very serious offences, the learned counsel for the petitioner pointed out two aspects. First one is that, the petitioner has been in custody from 22.02.2023 and the 2nd point is that, the defacto complainant and another injured person viz. Dhanesh D. filed affidavits stating that the entire dispute has been settled and they have no intention to proceed with the prosecution.

5. Whereas the learned Public Prosecutor strongly opposed grant of bail highlighting the antecedents of the petitioner and also serious injuries sustained to the defacto complainant inclusive of fractures. It is submitted by the learned Public Prosecutor that, in this matter, apart from six serious injuries, the defacto complainant sustained nasal bone fracture and fracture of nasal septum.

6. On perusal of the case diary, it is discernible that, this crime was registered on the basis of FIS given by the

defacto complainant. In the FIS, the overt acts at the instance of the petitioner by using a knife and causing of stab injuries could be gathered. In the copy of wound certificate of the defacto complainant, the following injuries were noted:

1. An incised wound 4x0.5x3 cm on the left cheek 3 cm below eye and 7 cm in front of ear.
2. An incised wound 6x2x4 cm vertically placed over the left side of back of chest 7 cm from midline and 15 cm below top of shoulder.
3. Multiple small contused abrasions present over the out aspect of left of chest
4. A stab wound of size 3x2x3 cm over the lower outer quadrant of right buttocks
5. A stab wound 2x2x2 cm present over the right buttock 5 cm below injury
6. An abrasion 3x1 cm, 2 cm behind the ear over the left side of scalp
7. CT of facial bones shows bilateral nasal bone fracture, fracture of inferior wall of left orbit, fracture of nasal septum.

7. Going by the affidavits filed by the defacto complainant and the injured, stating that the dispute between them and accused has been settled, cannot be considered by this Court for any purpose, since offence under Section 307 of

IPC cannot be settled acting on the recitals from the affidavit that the matter has been settled. This aspect has been well covered by the decision of the Apex Court reported in [2019 (2) KHC 190 : AIR 2019 SC 1296 : 2019 (2) KLJ 226 : 2019 (5) SCC 688], ***State of Madhya Pradesh v. Laxmi Narayan & Ors.*** In the said decision, the Apex Court laid down the principles regarding the matters to be considered while compounding non compoundable offences and it is stated therein that offence under Section 307 of IPC would fall under the category of heinous and serious offences and, therefore, the same is to be treated as crime against the society and not against the individual alone. Therefore, the criminal proceedings for the offence under S.307 IPC and/or the Arms Act etc., which have a serious impact on the society, cannot be quashed in exercise of the powers under S.482 of the Cr.P.C, on the ground that the parties have resolved their entire dispute amongst themselves.

8. It has been stated further that, it would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to

framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Since it is settled so, mere plea of settlement of crime alleging commission of offence punishable under Section 307 of IPC by itself is not a ground to grant bail also and grant of bail shall be subject to the merits of the matter, inclusive of antecedents of the petitioner.

9. Going by the available materials, the allegations are very serious and the same are supported by medical evidence and statements of the other witnesses. Merely because the injured persons submitted that they have settled the matter, that by itself is not a reason to grant bail to the accused in a crime involving offence punishable under Section 307 of IPC, since the other witnesses if depose at the time of evidence in support of the prosecution, conviction and sentence are

possible. It is shocking to note that, the petitioner is a person involved in 15th crime and he has involvement in the following crimes, prior to this occurrence:

1. Kottiyam PS Cr 216/2010 U/s 143, 147, 148, 323, 324, 326, 427, 452 & 149 IPC & Sec 27 of Arms Act
2. Kottiyam PS Cr 240/2010 U/s 143, 147, 148, 341, 294(b), 323, 324 & 149 IPC & 27 of Arms Act
3. Kottiyam PS Cr 1663/2010 U/s 294(b), 323, 326 & 34 IPC
4. Kottiyam PS Cr 1291/2012 U/s 307 & 34 IPC
5. Kottiyam PS Cr 925/2013 U/s 365, 323, 364(A) & 34 IPC
6. Kottiyam PS Cr 992/2017 U/s 294(b), 341, 324, 323, 34 IPC
7. Kottiyam PS Cr 1727/2017 U/s 323, 324 & 34 IPC
8. Kottiyam PS Cr 2372/2017 U/s 294(b), 506(ii) IPC & Sec 27 of Arms Act
9. Kottiyam PS Cr 1934/2017 U/s 107 CrPC
10. Kilikolloor PS Cr 2278/2017 U/s 294(b), 324, 326, 307, 34 IPC
11. Kottiyam PS Cr 479/2018 U/s 341, 323, 324 IPC
12. Kottiyam PS Cr 278/2019 U/s 307 & 34 IPC
13. Kannanalloor PS Cr 115/2019 U/s 447, 294(b), 323, 324, 308 & 506(ii) IPC & Sec 27 of Arms Act
14. Adoor PS Cr 1852/2020 U/s 365, 384, 342, 323, 324, 506(ii), 34 IPC

10. On perusing the antecedents, it is noticed that the offences alleged against the petitioner are very serious. That apart, he was detained under Section 3(1) of Kerala Anti-Social Activities (Prevention) Act on 17.07.2018 and 05.10.2019. Most importantly, the prosecution records *prima facie* would justify commission of offences alleged herein. Therefore, the petitioner cannot be released on bail, at this stage.

Accordingly, this bail application stands dismissed.

Sd/-

**A. BADHARUDEEN
JUDGE**

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