

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 21ST DAY OF JULY 2023 / 30TH ASHADHA, 1945

BAIL APPL. NO. 4416 OF 2023

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

CRMC 620/2023 OF DISTRICT COURT & SESSIONS COURT, THRISSUR

PETITIONER/ACCUSED:

BIPIN SUNNY

AGED 28 YEARS

S/O. SUNNY, MURIYAD, ALOOR-POST, THRISSUR-DIST.

PERMANENT R/AT

PARIPPIL ETTATHOTTU, ARIVILANJAPOYIL, JOSEGIRI-POST, ALAKODE-TALUK, KANNUR-DIST

PIN - 670511

BY ADVS.

BIJU ANTONY ALOOR

K.P.PRASANTH

ARCHANA SURESH

HASEEB HASSAN.M

ARDRA P.

SAMEESKHA P.R.

RESPONDENTS/COMPLAINANT:

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

2 THE STATION HOUSE OFFICER
ALOOR POLICE STATION. THRISSUR DISTRICT, PIN - 679303

***ADDL R3 IMPLEADED**

ADDL.R3 GANAPRAKASAM.J
S/O JESTOSE, AGED 32 YEARS, HOUSE NO.7/338A, MURIYARD P.O,
THRISSUR DISTRICT, PIN- 680683

*ADDL R3 IS IMPLEADED AS PER ORDER DATED 12/7/2023 IN CRL.MA.
1/2023 IN BAIL APPL. NO. 4416 OF 2023

R1 & R2 BY SR.PUBLIC PROSECUTOR SRI.VIPIN NARAYAN A

ADDL R3 BY ADV SRI.C.K.JAYAKUMAR

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 14.07.2023, THE
COURT ON 21.7.2023, DELIVERED THE FOLLOWING:

CR

ORDER

Dated this the 21st day of July, 2023

This is the second application for anticipatory bail, filed by the sole accused in Crime No.27/2023 of Aloor Police Station.

2. Heard the learned counsel for the petitioner, the learned counsel appearing for the de facto complainant and the learned Public Prosecutor.

3. I have perused the case diary, as such, placed by the learned Public Prosecutor.

4. The prosecution case is that, on 07.01.2023, at about 11.00 a.m., when the de facto complainant reached Muriyad, the accused herein wrongfully restrained the de facto complainant and attempted to prod on his abdomen, with intention to commit culpable homicide not amounting to murder. Since the de facto complainant evaded, the same caused abrasion on the abdomen. Thereafter, the accused again stabbed the de facto complainant and the same caused deep injury on his right wrist. On this

premise, the prosecution alleges commission of offences punishable under Sections 341, 325 and 308 of the Indian Penal Code.

5. Earlier, the anticipatory bail plea, at the instance of the petitioner, was dismissed by a detailed order, as per Annexure 3 order in B.A.No.269/2023, dated 2.3.2023. The contention raised by the parties and the finding of this Court as per the earlier order is as under:

“5. While pressing for anticipatory bail to the petitioner, the learned counsel for the petitioner would submit that the petitioner is innocent. According to him, crime No.21/2023 of Aloor police station was registered initially, where the allegation was that accused Nos.1 to 50 therein, after forming into an unlawful assembly, attacked the defacto complainant and others therein due to animosity arose out of an occurrence whereby they left ‘Muriyad Zion Sabha’. Annexure A2 is the copy of FIR placed by the learned counsel for the petitioner to substantiate registration of the said crime. It is submitted by the learned counsel for the petitioner further that in consequences of the said occurrence, the defacto complainant was attacked by the 1st accused, who is unknown, on 07.01.2023 at about 12 hours while the followers of ‘Muriyad Zion Sabha’ were orchestrating an agitation before the house of the defacto complainant. Thus, it is argued that this case vide crime No.27/2023 is one registered as a counter blast against the case registered at the instance of the petitioner vide FIR No.26/2023. It is argued further that FIR No.26/2023 was registered at the instance of the petitioner herein is a

subsequent occurrence after Annexure A2 FIR (Crime No.21/2023 of Aloor police station). Accordingly, the learned counsel would submit that the petitioner is innocent and allegations are false and therefore, he is liable to be released on bail. He has expressed the willingness of the petitioner to co-operate with the investigation to aid the investigation while pressing for anticipatory bail.

6. Whereas the learned counsel for the defacto complainant filed a detailed counter along with photographs showing overt acts at the instance of the petitioner. He also would submit that the defacto complainant in this case is a native of Tamil Nadu and he has no connection with the occurrence narrated in FIR No.21/2023 or FIR No.26/2023. According to the learned counsel for the defacto complainant, the petitioner was attacked by the accused/the petitioner herein without any rationale and thereby he sustained deep injuries, as could be borne out from the photographs also, apart from the medical documents. Accordingly, he zealously opposed grant of anticipatory bail.

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 3rd and 4th
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 the weapon alleged to be used by the petitioner. Therefore, this is not a fit case to grant anticipatory bail.

Accordingly, this petition stands dismissed."

6. The learned counsel for the petitioner would submit that, there is change in circumstances and this Court granted anticipatory bail to the accused in other crimes connected with this crime and therefore, the petitioner also is entitled to get anticipatory bail, since there is no necessity to have custodial interrogation in this matter. The learned counsel for the petitioner placed decision of the Rajasthan High Court in

Ganesh Raj v. State Of Rajasthan And Ors., reported in **[2005 CriLJ 2086]**, to contend that, second or subsequent bail applications under Section 438 of the Cr.P.C. is maintainable when there are change of circumstances. In this decision, reference to relevant decisions of the Apex Court could be gathered. Insofar as the legal position as to filing of second or successive anticipatory bail applications, the law is settled that second or subsequent bail applications can be filed when there are change in circumstances, so that the petitioner could establish entitlement of bail/anticipatory bail in view of the change in circumstances.

7. The learned Public Prosecutor as well as the learned counsel for the de facto complainant submitted that, this Court dismissed the anticipatory bail plea, at the instance of the petitioner, as per Annexure 3 order. Thereafter, after suppressing the dismissal of the anticipatory bail application by this Court, the petitioner filed anticipatory bail application before the Sessions Judge, Thrissur and on 25.5.2023, the learned Sessions Judge dismissed the application, holding that the application filed by the petitioner before the Sessions Judge, after dismissal of

anticipatory bail plea, at the instance of the petitioner by this Court, was by suppressing the adverse order passed by this Court. The Sessions Court also found custodial interrogation is inevitable in the facts and circumstances of the case. Annexure 4 is the copy of the order. The learned Public Prosecutor pointed out that, after dismissal of anticipatory bail plea by the High Court, filing of anticipatory bail application before the Sessions Judge, by suppressing the dismissal of the earlier application, cannot be encouraged and the same shall be deprecated. Similarly, it is argued that there must be a guideline holding the view that after dismissal of an anticipatory bail application by the High Court, second or successive applications shall be filed before the High Court, though the same is one filed pointing out change in circumstances.

8. In support of this submission, the learned Public Prosecutor placed decision in **Jagmohan Bahil and Another v. State (NCT of Delhi) and Another** reported in **[(2014) 16 Supreme Court Cases 501]**. In the said decision, the Apex Court considered filing of successive bail applications by unscrupulous litigants with idea of forum shopping and the same

is a depreciable conduct in the field of law. In the decision, the Apex Court considered its earlier decision in **Shahzad Hasan Khan v. Ishtiaq Hasan Khan and Another [(1987) 2 SCC 684]** and held as under:

9. In this context, we may refer with profit to the decision in Shahzad Hasan Khan v. Ishtiaq Hasan Khan wherein this Court took note of the fact that three successive bail applications made on behalf of the accused had been rejected and disposed of finally by one Judge of the High Court. However, another learned Judge, despite being aware of the situation, granted bail to the respondent. In that context, this Court held that long-standing convention and judicial discipline requires bail application to be placed before the learned Judge who had passed earlier orders. Proceeding further this Court observed: (SCC p. 690, para 5)

"5..... The convention that subsequent bail application should be placed before the same Judge who may have passed earlier orders has its roots in principle. It prevents abuse of process of court inasmuch as an impression is not created that a litigant is shunning or selecting a court depending on whether the court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up. If successive bail applications on the same subject are permitted to be disposed of by different Judges there would be conflicting orders and a litigant would be pestering every Judge till he gets an order to his liking

resulting in the credibility of the court and the confidence of the other side being put in issue and there would be wastage of courts' time. Judicial discipline requires that such matters must be placed before the same Judge, if he is available for orders. Since Justice Kamleshwar Nath was sitting in court on 23-6-1986 the respondent's bail application should have been placed before him for orders."

9. Similarly, the Apex Court considered decision in **State of Maharashtra v. Captain Buddhikota Subha Rao** reported in **[1989 Supp (2) SCC 605]**.

10. After referring the above decisions, in Paragraph No.13, the Apex Court held as under:

“13. On a perusal of the aforesaid authorities, it is clear to us that the learned Judge, who has declined to entertain the prayer for grant of bail, if available, should hear the second bail application or the successive bail applications. It is in consonance with the principle of judicial decorum, discipline and propriety. Needless to say, unless such principle is adhered to, there is enormous possibility of forum-shopping which has no sanction in law and definitely, has no sanctity. If the same is allowed to prevail, it is likely to usher in anarchy, whim and caprice and in the ultimate eventuate shake the faith in the adjudicating system. This cannot be allowed to be encouraged. In this regard we may refer to the pronouncement

in Chetak Construction Ltd. v. Om Prakash, wherein this Court has observed that a litigant cannot be permitted "choice" of the "forum" and every attempt at "forum-shopping" "must be crushed with a heavy hand. In Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar, it has been observed that the superior courts of this country must discourage forum-shopping."

11. The learned Public Prosecutor argued, based on the above decisions further that, since unscrupulous litigants used to file successive/secondary anticipatory bail applications before the Sessions Court, after dismissal of the anticipatory bail plea by the High Court, such filing shall be deprecated and ratio shall be laid to hold that, after dismissal of an application for anticipatory bail by the High Court, the petitioner cannot file anticipatory bail plea before the Sessions Court and he has to file the same before the High Court itself.

12. Before addressing the submission of the learned Public Prosecutor, in this matter, as I have already observed in the previous order (Annexure 3), eventhough, two more crimes registered as per Crime Nos.21/2023 and 26/2023, the case at hand is a solitary incident, whereby, the accused alleged to have assaulted the de facto complainant, with intention to commit

culpable homicide and he sustained consequential injuries, as stated in the earlier bail order. The consistent finding of this Court in the earlier bail order was that, *since arrest, custodial interrogation and recovery of weapon, at the instance of the petitioner, are necessary, he is not liable to be released on anticipatory bail.* In fact, the said finding is based on materials in the facts of the given case and there is no change of circumstances otherwise available to grant anticipatory bail to the petitioner and therefore, the second application for anticipatory bail also must fail.

13. Coming to the question regarding filing of anticipatory application before the Sessions Court, after dismissal of anticipatory bail plea by the High Court, that too, after suppressing the adverse order from the High Court, cannot be justified for any reason. Therefore, in order to keep judicial discipline in tact, in cases where the High Court rejected anticipatory bail plea, second or successive anticipatory bail applications, pointing out change in circumstances, have to be filed before the High Court and not before the Sessions Court.

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In the result, the bail application stands dismissed.

Registry is directed to forward a copy of this order to all the Sessions Judges in the State for information and compliance.

Sd/-
A. BADHARUDEEN
JUDGE

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