

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 30TH DAY OF JUNE 2023 / 9TH ASHADHA, 1945

BAIL APPL. NO. 4828 OF 2023

CRIME NO.814/2023 OF KATTAKADA POLICE STATION,

THIRUVANANTHAPURAM

PETITIONER/1ST ACCUSED:

SHYJU G.J

AGED 40 YEARS, S/O GEORGE M.

RESIDING AT M.G.MANDIRAM,

PAMPUKALA, PUTHITATHURA, KARUMKULAM,

THIRUVANANTHAPURAM - 695 526

PRINCIPAL OF KATTAKADA CHRISTIAN COLLEGE,

KATTAKADA, THIRUVANNATHAPURAM RURAL,

KERALA.

BY ADV SASTHAMANGALAM S. AJITHKUMAR

RESPONDENT/COMPLAINANT/STATE:

STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR,

HIGH COURT OF KERALA, PIN - 682031

BY SMT.P.P.SREEJA V., PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
26.06.2023, ALONG WITH Bail Appl.NO.4362/2023, THE COURT ON
30.06.2023 PASSED THE FOLLOWING:

B.A. Nos.4828 &4362/2023

-:2:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 30TH DAY OF JUNE 2023 / 9TH ASHADHA, 1945

BAIL APPL. NO. 4362 OF 2023

CRIME NO.814/2023 OF KATTAKADA POLICE STATION,

THIRUVANANTHAPURAM

PETITIONER/2ND ACCUSED:

VISAKH A. ,
AGED 24 YEARS, S/O ANIRUDHAN,
LEKSHMI BHAVAN,
AINACHAL P.O, KATTAKADA,
THIRUVANANANTHAPURAM DISTRICT- 695572

BY ADV S.NIKHIL SANKAR

RESPONDENT/COMPLAINANT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM DISTRICT, PIN - 682031
BY SRI.K.A.NOUSHAD, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
26.06.2023, ALONG WITH Bail Appl.NO.4828/2023, THE COURT ON
30.06.2023 PASSED THE FOLLOWING:

B.A. Nos.4828 &4362/2023

-:3:-

BECHU KURIAN THOMAS, J.

B.A. Nos. 4828 & 4362 of 2023

Dated this the 30th day of June, 2023

ORDER

These are applications for anticipatory bail filed under section 438 of the Code of Criminal Procedure, 1973.

2. Petitioner in B.A. No.4828 of 2023 is the first accused in Crime No. 814 of 2023 of Kattakada Police Station, Thiruvananthapuram, while petitioner in B.A. No. 4362 of 2023 is the second accused in the said crime. Petitioners are hereafter referred to as first and second accused, respectively.

3. The first accused was the Principal of the Christian College, Kattakada, while the second accused is a first year degree student of the said college. Crime No. 814 of 2023 was registered on 21-05-2023 on the basis of a complaint submitted by the Registrar of Kerala University, under whom the Christian College is affiliated. As per the FIR, the accused had, with the common intention to enable the second accused to participate in the Kerala University Union

B.A. Nos.4828 &4362/2023

-:4:-

elections, created false documents and committed criminal breach of trust and cheating by forging the election documents of the Christian College, Kattakada and the first accused forwarded those forged documents to the Kerala University to enable the second accused to participate in the University Union elections, resulting in damage to the reputation of the Kerala University and eroding the sanctity of the election process of the University and the accused had acted in concert with each other and thereby committed the offences under sections 409, 419, 420, 465, 468 and 471 read with section 34 of the Indian Penal Code, 1860.

4. I have heard Adv. Sasthamangalam S. Ajithkumar, on behalf of the first accused and Adv. S.Nikhil Sankar on behalf of the second accused. I also heard Sri.K.A.Noushad and Smt.V.Sreeja, the learned Public Prosecutors.

5. According to Sri. Sasthamangalam S. Ajithkumar, the offences alleged against the first accused are baseless and as the Principal of a college, no criminal intent can be attributed to the first accused. It was also submitted that no false document was created by the first accused, and therefore, he cannot be roped in as an accused in the alleged crime. He also vehemently submitted that

B.A. Nos.4828 &4362/2023

-:5:-

even if the entire prosecution allegations are assumed to be correct for argument's sake, still, the allegations would only reveal a circumstance for initiating disciplinary proceedings and not a cause for a criminal complaint. It was also argued that when the originally elected candidate - Smt. Anakha A.S. resigned from the post of University Union Councillor of the college, as is evident from Annexure A3 document, the first accused had merely filled up the said vacancy in exercise of the powers under section 43 of the Kerala University Act, 1974 and therefore, no criminality can be attributed to such conduct.

6. Adv. S. Nikhil Sankar, on behalf of the second accused, also submitted that the said accused is totally innocent and that he is unaware of the nature of the allegations against him. It was further submitted that he had not done any act in connection with the forgery of a document and that he has been roped in as an accused without any basis. According to the learned counsel, the second accused is only a student of the college whose name was included by the Principal as a University Union Councillor after the resignation of the elected candidate. The learned counsel asserted that the act of the first accused in sending the name to the University cannot attract any

B.A. Nos.4828 &4362/2023

-:6:-

criminal liability, at least as against the second accused. The learned Counsel also submitted that considering the young age of the second accused and the fact that he is only a student of the college, must weigh with the court and protect him with an order of anticipatory bail.

7. The learned Public Prosecutors opposed the applications and submitted that considering the nature and seriousness of the allegations, custodial interrogation is essential, without which the investigation cannot fully and effectively be completed. The attention of the court was invited to the proforma submitted by the first accused, indicating that the second accused was the duly elected University Union Councillor from the college. The said proforma confers rights and obligations and therefore, a forged document was submitted, which, if not for the complaint from the students, would have gone unnoticed and thereby would have destroyed the very basis of a fair University Union elections.

8. I have considered the rival contentions and have also perused the case diary apart from the documents produced by the accused.

9. At the outset of the discussion, it is necessary to bear in mind that as per the prevailing system of elections in colleges is

B.A. Nos.4828 &4362/2023

-:7:-

concerned, the University Union representatives from the individual colleges of a University will form the electoral college for electing the Office bearers of the University Students Union. The age limit prescribed for undergraduate students for contesting the elections is fixed as between 17 and 22. In the event of any major post of office bearer falls vacant within two months of elections, re-elections should be conducted. The above are noticed from clauses 6.2.3, 6.5.1 and 6.10.4 of the Lyngdoh Committee recommendations accepted by the Supreme Court in the decision in **University of Kerala (1) v. Council, Principals', Colleges, Kerala and Others** [(2006) 8 SCC 304].

10. A brief appreciation of the circumstances of the crime as revealed from the case diary and the submission made across the Bar are also required to be mentioned. In the elections to the Christian College, Kattakada, held on 05-12-2022, two candidates were unanimously elected to the posts of University Union Councillors. As per the list of elected candidates submitted by the Returning Officer, Ms. Anakha A.S. and Mr. Aromal V.L were those candidates. However, when the proforma for furnishing details of University Union Councillors elected from the college, was submitted

B.A. Nos.4828 &4362/2023

-:8:-

to the Kerala University, it showed the name of the second accused - Mr. Vishak A., as the University Union Councillor elected from the college, in place of Ms. Anakha A.S.

11. The proforma is submitted by the Principal of the College and is certified as correct and is also signed by him. Once the list of elected candidates is submitted by the Returning Officer, there is no authority for any person to change the names, unless a fresh election is conducted. None has a case that any fresh election was conducted in the Christian College, Kattakada after 05-12-2022. Therefore, prima facie, the proforma is seen to be incorporated with the name of a person who was not elected in any valid election. The proforma is also seen as certified by the Principal, containing the list of validly elected candidates in the election held on 05-12-2022. The photograph of the second accused and his signature is also seen affixed to the proforma. A person who was not elected has signed and affixed his photograph in the proforma submitted, as having been duly elected, which is even certified by the first accused.

12. In the list of elected candidates, as submitted by the Returning Officer, an endorsement is also seen entered into specifying that Anakha A.S. resigned on 17.01.2023. The

B.A. Nos.4828 &4362/2023

-:9:-

endorsement is admittedly made by the first accused and is even signed by him. The first accused had no authority to tamper with the list of elected candidates submitted by the Returning Officer. A prima facie glance at the documents reveals that three complaints were filed by the students of the college on 15.05.2023, pointing out that the election results have been manipulated and Ms. Anakha A.S., who had been elected unanimously and who had taken oath as University Union Councillor of the College, was replaced by incorporating the name of the second accused, who had not even submitted his candidature for the elections. Though the first accused alleges that the elected candidate had submitted her resignation on 17-01-2023, no fresh elections were thereafter conducted. On the basis of the three complaints submitted by the students of the college the Principal of the college was directed to appear before the Registrar of the University along with all the records in original on 17.05.2023. Thereafter, as per the minutes of the 57th meeting of the Syndicate of the University held on 20.05.2023, it was resolved to enquire into the criminal conspiracy pertaining to the forgery of election documents also.

13. A perusal of the case diary and on an appreciation of the

B.A. Nos.4828 &4362/2023

-:10:-

contentions advanced by the respective counsel, it is noticed that the first accused is alleged to have included the name of the second accused as the candidate duly elected in the election held on 05.12.2022 as the representative of the college to the University Union. The second accused had not even submitted his nomination for such an election and on the contrary, the elected candidate (though unanimously elected) was a different person. Without forwarding the name of the elected candidate, the Principal is alleged to have included the name of the second accused in the proforma for elected candidates. The second accused has affixed his signature as well as his photograph in the proforma for elected candidates. The proforma so submitted to the University entails rights to the candidate as he/she consequentially becomes eligible to be included in the voters' list for the University Union election.

14. On an appreciation of the aforesaid circumstances, as revealed from the case diary and the documents produced by the petitioners, it is evident that the offences alleged against the accused are serious in nature. The sanctity of the election process has been materially affected. The Principal of a College is not entitled by law to nominate a person to the post of University Union representative,

B.A. Nos.4828 &4362/2023

-:11:-

even if it falls vacant by resignation or otherwise. The powers under section 43 of the University Act do not apply in the context. Dishonest and fraudulent conduct is prima facie evident on the part of the accused. The reasons and the manner in which the name of the second accused was incorporated as the elected candidate and the surrounding circumstances are required to be brought out during investigation. Considering the nature of allegations and its implications, the stage of investigation and the materials required to be unearthed, this Court is of the view that custodial interrogation of the accused is essential.

15. The contention of the second accused that he is totally innocent and cannot be mulcted with criminal liability for the acts of the first accused, and hence should not be subjected to custodial interrogation, is only to be rejected. Prima facie, he has affixed his signature and supplied his photographs to be affixed on the proforma, thereby aiding the creation of a false document. Further, as per the cause title of his bail application he is 24 years of age. By virtue of the Lyngdoh Committee recommendations accepted by the Supreme Court, the second accused could not even have submitted a nomination to a college election due to the age restriction as he is

B.A. Nos.4828 &4362/2023

-:12:-

an undergraduate student. In such circumstances, the contention of the second accused that he should not be subjected to custodial interrogation is only to be rejected.

16. Though the learned counsel for the first accused had contended that interrogation with limited custody as propounded in **Sushila Aggarwal and Others v State (NCT of Delhi) and Another** [(2020) 5 SCC 1] would suffice the investigation, this Court is of the opinion that considering the nature of allegations and taking into reckoning the influence that could be wielded by the accused over other witnesses, custodial interrogation is essential. The truth of the allegations could be unravelled only by custodial interrogation.

17. In view of the above, I find no reason to protect the petitioners, who are accused 1 and 2 in Crime No.814 of 2023 of Kattakada Police Station, with an order of pre-arrest bail.

18. After the judgment was pronounced, the learned counsel for the first accused submitted that first accused is willing to surrender before the Investigating Officer on 04.07.2023, as he has an examination on 03.07.2023. Considering the aforesaid submission, I direct that in the event of the first and second accused surrendering before the Investigating Officer on or before

B.A. Nos.4828 &4362/2023

-:13:-

04.07.2023, they shall be interrogated and thereafter the procedure contemplated in accordance with law shall be complied with.

These anticipatory bail applications are therefore dismissed as above.

**BECHU KURIAN THOMAS
JUDGE**

vps