

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

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

CRL.MC NO. 2446 OF 2023

AGAINST CRL.MC 478/2023 OF SESSIONS COURT, KOZHIKODE
CRIME NO.250/2023 OF NADAKKAVU POLICE STATION, KOZHIKODE

PETITIONER/DEFACTO COMPLAINANT:

DR. P K ASOKAN
AGED 60 YEARS, S/O NARAYANAN NAIR,
ANAGHA (H),
POTTANGADI RAGAVAN ROAD, WEST NADAKKAVU,
KOZHIKODE, PIN - 673011

BY ADVS.

SRI.S.RAJEEV
SRI.V.VINAY
SRI.SARATH K.P.
SRI.M.S.ANEER
SRI.PRERITH PHILIP JOSEPH
SRI.ANILKUMAR C.R.

RESPONDENTS/STATE/ACCUSED NO.4 & 5:

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

(CRIME NO 250/2023 OF NADAKKAVU POLICE STATION,
KOZHIKODE) .
- 2 SALMANUL FARIS
AGED 30 YEARS, S/O ABDUL HAMEED,
PUTHIYARAKKAL HOUSE,
VARITTIK KUNNAMANGALAM,
KOZHIKODE - 673571
- 3 MUHAMMED RASHID.T
AGED 28 YEARS, S/O ALI.V,
THANDANVEETIL HOUSE,

ANAPARA, KUNNAMANGALAM,
KOZHIKODE - 673571

BY ADVS.

SRI.NOUSHAD K.A, PUBLIC PROSECUTOR

SRI.A.RANJITH NARAYANAN

SRI.T.SHAJITH

SMT.A.SIMI

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 29.03.2023, THE COURT ON 04.04.2023 PASSED THE
FOLLOWING:

"C.R."

BECHU KURIAN THOMAS, J.

Crl.M.C No.2446 of 2023

Dated this the 4th day of April, 2023

ORDER

The trembling hands of a surgeon and the shivering mind of a physician do not augur well for the patients at large. Doctors continue to face threats, when a mishap occurs to a patient. Even for the slightest provocation, health personnel are attacked. Despite legislation prevailing in the State of Kerala and the repeated court orders to treat attacks on health personnel as a serious crime, violence against them recur. The casual approach adopted by the courts while dealing with instances of attacks on health personnel also contribute to the tendency to resort to such violence.

2. Petitioner is a doctor. He is alleged to have been assaulted on 04.03.2023 by respondents 2 and 3 along with three other persons and a crime was registered as FIR No.250 of 2023 of Nadakkavu Police Station. The offences alleged are under sections

323, 325, 427, 506 and 308 r/w section 34 of the Indian Penal Code, 1860, apart from sections 3 and 4 of the Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damages to Property) Act, 2012 (for short 'the Healthcare Act').

3. According to the prosecution, on 04.03.2023, six persons attacked the petitioner and his hospital due to an enmity relating to the death of a foetus. When Naja Salman - the wife of the second respondent gave birth to a still-born child at the Fathima Hospital, Kozhikode, where the petitioner's wife was the Gynaecologist, due to the enmity, accused destroyed the glass and flowerpots of the hospital and attacked the petitioner causing a fracture to his nasal bone.

4. Respondents 2 and 3 are accused 4 and 5. The anticipatory bail applications filed by them were dismissed on 17.03.2023 by the 1st Additional Sessions Court, Kozhikode after observing that custodial interrogation is necessary. It is also relevant to mention that on the same day, the regular bail applications of accused 1 to 3 were dismissed by the 1st Additional Sessions Judge, Kozhikode by an order in Crl.M.C No.429 of 2023.

5. After the anticipatory bail application of respondents 2 and 3

were dismissed, they surrendered before the Principal Sessions Court, Kozhikode on 20-03-2023. On the day of surrender itself, by the impugned order, the learned Sessions Judge granted regular bail to respondents 2 and 3. The order of the learned Sessions Judge is very brief and is necessary to be extracted as below:

“Accused Surrendered. The only offence which is non bailable is U/s.308 IPC. The report of the police shows that the dispute was with respect to death on an infant at Fathima hospital, Kozhikode. The defacto complainant is the doctor who is leading the Gynecology department, The 1st accused is the husband of the lady who give birth to the child. They allege medical negligence on the part of the doctor. Any way there is no material to attract Sec.308 IPC. No custodial interrogation is also necessary. There is no specific allegation against those accused persons. Hence bail granted. Execute a bond of Rs.50,000/- with two solvent sureties. They shall appear before SHO, Nadakkavu on all Mondays at 10 A.M. for a period of one month.”

6. The aforesaid order is impugned by the defacto complainant contending that the grant of bail to respondents 2 and 3 is without any application of mind and without considering the seriousness of the allegations.

7. Adv.S.Rajeev, learned counsel appearing for the petitioner submitted that a reading of the impugned order reveals its perversity

and the non-application of mind. According to him, even the offences under the Healthcare Act has not been referred to and no reasoning of any nature has been given for the grant of bail. According to the counsel, bail was granted on the day of surrender itself by the Principal Sessions Court without even considering that three days ago the Additional Sessions Judge had rejected the bail application specifically mentioning that custodial interrogation of the accused is essential.

8. Sri.T.Shajith and Sri.A.Ranjith Narayanan, learned counsel for respondents 2 and 3 submitted that the learned Sessions Judge had considered the bail application and the order was issued after hearing the Public Prosecutor. It was further pointed out that the second respondent was the father of the foetus which died during childbirth and therefore any act committed by him was only an emotional outburst and cannot be characterised as a criminal act. It was further submitted that there was no assault or any violence and that a flowerpot had fallen down, and it merely scraped the back of one of the persons, which is now being projected as an attack against the doctor. The learned counsel also submitted that the medical records regarding the fracture of the nasal bone and the

other injuries are all concocted and has no connection with the incident.

9. The learned Public Prosecutor was also heard.

10. Respondents 2 and 3 had approached the court with an application for anticipatory bail as Crl.M.C No.420 of 2023 and 430 of 2023. Both applications were dismissed on 17.03.2023 after observing that custodial interrogation is essential. It was also observed that attacks on doctors cannot be justified even if there is negligence on their part and that the wide meaning to the word 'violence' cannot be ignored while considering an application for pre-arrest bail.

11. This Court had in **Arun P. v. State of Kerala and Others** (MANU/KE/2421/2022) held that every harm, intimidation, obstruction or hindrance to a healthcare service person in discharge of duty is treated as violence and is made non-bailable as per section 4(4) of the Act and prohibited under section 3 of the Healthcare Act. This Court had also observed that if a physician with trepidation, a surgeon with trembling hands and a disquiet nurse can lead to wrong diagnosis, failed surgeries and improper nursing care, life of several patients could fall into peril, and consequently, the public at large can

become prejudiced. This Court also observed that if the Act is to achieve its purpose, Courts must bear in mind the wide definition of the term 'violence' which is nestled under the umbrella of a non-bailable offence.

12. Despite these observations, the learned Sessions Judge, without verifying even the nature of offences alleged in the FIR, which also included sections 3 and 4 of the Healthcare Act, observed that the only offence which is non-bailable is under section 308 IPC and granted bail. No reasoning of any nature is seen stated. Non-application of mind is glaringly evident. The circumstances that led to the crime or the factual narration of the crime have not been mentioned. All these and more compel this Court to observe that perversity is writ large in the order of the learned Sessions Judge.

13. In the decision in **Shajil M.K. v. State of Kerala and Another** (2016 (2) KLT 511) this Court had observed, relying upon the decision of the Supreme Court in **Mansab Ali v. Irsan and Another** [(2003) 1 SCC 632], that in granting or refusing bail, courts are required to indicate, even though briefly, the reasons for grant or refusal of bail. It was also observed that reasons are always based on the facts of the case and therefore without mentioning the facts no

reasons can be recorded. The court went on to state that reasons are interlinked with the facts of the case and hence it is necessary to mention the facts in brief before mentioning the reasons in the order granting or refusing bail by the courts. It was also observed that facts would include inter alia the date of arrest, surrender of the accused, rank of the accused etc.

14. In **Mauji Ram v. State of Uttar Pradesh and Another** [(2019) 8 SCC 17] and in **Preet Pal Singh v. State of Uttar Pradesh and Another** [(2020) 8 SCC 645] the Supreme Court observed that reasons even though brief must be stated while granting or refusing bail.

15. In the decision in **Kamla Devi v. State of Rajasthan and Another** [(2022) 6 SCC 725] the Supreme Court had observed that the court while deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment, frivolity of the prosecution case, reasonable apprehension of the witnesses and the prima facie satisfaction of the court in support of the charge against the accused. In the decision in **Mahipal v. Rajesh Kumar Alias Polia and Another** [(2020) 2 SCC 118] it was observed that where a

court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. It was further observed that when an order fails to provide reasons there is a presumption that there was non-application of mind.

16. A glance at the impugned order reveals that neither has the learned Sessions Judge mentioned the facts of the case, or the date of surrender, or the provisions under which offences have been alleged nor even any reasons for granting bail. The offence alleged is also not fully correct and even the factual aspects mentioned, like defacto complainant leading the gynaecology department are also wrong. The question whether custodial interrogation is required or not and the nature of injury sustained by the defacto complainant are all matters that were relevant but were conspicuously omitted to be even mentioned. Even the observation of the Additional Sessions Judge that custodial interrogation is essential was not taken into reckoning. In view of the above, I am satisfied that perversity is writ large in the impugned order, and the same is liable to be set aside.

In the above circumstances, this petition under section 482 Cr.P.C is allowed. The bail granted to respondents 2 and 3 is set

aside. The bail bonds, if any, executed by them, shall also stand set aside. They shall forthwith surrender and the learned Sessions Judge shall reconsider the bail application afresh after granting an opportunity of hearing to all the necessary parties and in accordance with the law.

**Sd/-
BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX OF CRL.MC 2446/2023

PETITIONER 's/s' ANNEXURES

- ANNEXURE-I A TRUE COPY OF THE FIR AND FIS IN CRIME NO 250/2023 OF NADAKKAVU POLICE STATION, KOZHIKODE
- ANNEXURE-II A TRUE COPY OF THE COMMON ORDER DATED 17.03.2023 IN CRL MC NOS. 420/2023 AND 430/2023 PASSED BY THE 1ST ADDITIONAL SESSIONS JUDGE, KOZHIKODE
- ANNEXURE-III A TRUE COPY OF THE ORDER DATED 20.03.2023 PASSED BY THE PRINCIPLE COURT OF SESSIONS, KOZHIKODE IN CRL MC NO 478/2023
- ANNEXURE-IV A TRUE COPY OF THE ORDER DISMISSING THE BAIL APPLICATION OF ACCUSED NO. 1 TO 3 BY THE 1ST ADDITIONAL SESSIONS JUDGE, SESSIONS COURT DIVISION KOZHIKODE IN CRL MC NO 429/2023
- ANNEXURE-V A TRUE COPY OF THE DISCHARGE SUMMARY OF THE PETITIONER DATED 06.03.2023
- ANNEXURE-VI THE TRUE COPIES OF THE PHOTOGRAPHS OF THE PETITIONER SUSTAINING INJURIES
- ANNEXURE-VII A TRUE COPY OF THE OBJECTION FILED BY THE COUNSEL FOR THE PETITIONER IN THE COURT BELOW

RESPONDENT ' 'S/S' ANNEXURES

- ANNEXURE R2 (a) A PHOTOGRAPH SHOWING THE STILL BORN CHILD
- ANNEXURE R2 (b) A PHOTOGRAPH EVIDENCING THE 2ND RESPONDENT HUSBAND HOLDING AND CARRYING NAJA

- ANNEXURE R2 (c) A PHOTOGRAPH SHOWING THE 2ND RESPONDENT HOLDING NAJA BEING TAKEN TO HIS CAR DRIVEN BY THE 3RD RESPONDENT
- ANNEXURE R2 (d) TRUE COPY OF THE DISCHARGE SUMMARY DATED 26/02/2023
- ANNEXURE R2 (e) A PHOTOGRAPH OF THE DE FACTO COMPLAINANT DOCTOR ADDRESSING THE MEDIA IMMEDIATELY AFTER THE INCIDENT
- ANNEXURE R2 (f) ANOTHER PHOTOGRAPH OF THE DE FACTO COMPLAINANT DOCTOR GIVING MEDIA INTERVIEW IMMEDIATELY AFTER THE INCIDENT
- ANNEXURE R2 (g) TRUE COPY OF THE APPLICATION FOR BAIL DATED 20/03/2023 FILED U/S 439 CRPC IN CMC NO.478/2023
- ANNEXURE R2 (h) TRUE COPY OF THE DISCHARGE SUMMARY DATED 07/03/2023 ISSUED BY THE ASTER MIMS HOSPITAL, KOZHIKODE

