

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 3<sup>RD</sup> DAY OF OCTOBER 2023 / 11TH ASWINA, 1945

CRL.MC NO. 6578 OF 2023

**CRIME.NO.1173/2023 OF KADAKKAL POLICE STATION, KOLLAM**

**PETITIONER/VICTIM:**

XXXXXXXXXX  
XXXXXXXXXX XXXXXXXXXXXX

BY ADVS.

SREERAJ M.D.  
BHANU THILAK  
VISHNUPRIYA M.V.

**RESPONDENTS/COMPLAINANT & ACCUSED:**

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM, PIN - 682 031.
- 2 BADARUDEEN E  
AGED 57 YEARS,
- 3 STATION HOUSE OFFICER  
KADAKKAL POLICE STATION, KOLLAM, PIN - 691 536.

BY ADVS.

K.V.ANIL KUMAR  
SWAPNA VIJAYAN(K/001165/2006)  
RADHIKA S.ANIL(K/000183/2019)  
SRI.NOUSHAD K.A. (SR.PP)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
03.10.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

## **ORDER**

Petitioner has approached this Court by filing this petition under Section 482 of Code of Criminal Procedure seeking to quash Annexure-A2 order in CrL.M.C.No.1570/2023 on the file of the Additional Sessions Judge-I, Kollam. CrL.M.C.No.1570/2023 was an application filed by the 2<sup>nd</sup> respondent for anticipatory bail under Section 438 of Cr.P.C in Crime.No.1173/2023 of Kadakkal Police Station.

2. The learned counsel appearing for the petitioner points out that the only ground upon which the anticipatory bail was granted to the accused/2nd respondent is that the First Information Statement (FIS) was lodged by the victim only on the next day after the anticipatory bail application was filed before the court by the accused. It is submitted that the court while granting anticipatory bail to the accused found that there was substantial delay in registration of the complaint and that the complaint was registered on the day after the filing of the anticipatory bail application. It is submitted that the mistake was on account of the fact that, in column No.12 of the FIR (First Information Contents), it was stated that the offence took place in the month of May 2022, whereas it was actually in

the month of May 2023. It is submitted that in column No.3 of the FIR the date has been correctly recorded as 31-05-2023. It is submitted that the mistake was corrected by Annexure-A3 FIR. It is submitted that in such circumstances, the Sessions Court must be directed to reconsider the anticipatory bail application filed by the accused/2<sup>nd</sup> respondent and the petitioner must also be given an opportunity of being heard.

3. The learned counsel appearing for the 2<sup>nd</sup> respondent would vehemently oppose the grant of any relief to the petitioner. It is submitted that there are clear materials to show that the offence alleged against the accused/2<sup>nd</sup> respondent would not lie against him. It is submitted that the learned Judge while disposing of the bail application has also noted that the accused/2<sup>nd</sup> respondent had placed a pen-drive containing threatening conversations made against the accused/2<sup>nd</sup> respondent on behalf of the family of the victim. It is submitted that, the case has been put up only to harass the accused/2<sup>nd</sup> respondent and therefore the order granting anticipatory bail to the accused/2<sup>nd</sup> respondent may not be interfered with.

4. Heard the learned Senior Public Prosecutor also.

5. Having heard the learned counsel for the petitioner,

the learned Senior Public Prosecutor and the learned counsel for the 2<sup>nd</sup> respondent, I am of the view that Annexure-A2 order in CrL.M.C.No.1570/2023 on the file of the Additional Sessions Judge-I, Kollam, has to be set aside in exercise of jurisdiction vested in this Court under Section 482 of Cr.P.C. The finding in Annexure-A2 order that there was considerable delay in registering the complaint seems to be on the basis that, in column No-12 of the FIR, on account of some typographical error, it was noted that the offence alleged was in the month of May 2022, while it was actually in the month of May 2023. A reading of Annexure-A2 order shows that the only reason which compelled the Sessions Court to grant anticipatory bail to the accused/2<sup>nd</sup> respondent is that there was considerable delay in lodging the complaint. This is obviously a mistake of fact owing to the typographical error in the FIR.

Therefore, I am inclined to set aside Annexure-A2 order and restore CrL.M.C.No.1570/2023 to the file of the Additional Sessions Judge-I, Kollam, with a direction to reconsider the bail application filed by the 2<sup>nd</sup> respondent, after affording an opportunity of hearing to the petitioner as also to the 2<sup>nd</sup> respondent. The petitioner and the 2<sup>nd</sup> respondent shall mark appearance before the Additional Sessions Judge-I, Kollam on

CrL.M.C. NO.6578 OF 2023

5

11-10-2023 and thereafter the matter shall be considered afresh and disposed of by the Sessions Court in accordance with the law, after hearing the parties. I make it clear that I have not expressed any opinion on the merits of the matter and this order is being issued only on the finding that the reason which compelled the Sessions Court to grant anticipatory bail to the accused/2nd respondent is on a mistaken assumption of facts flowing from the mistake in column No.12 of the FIR. This CrL.M.C is ordered accordingly. It is made clear that till fresh orders are passed on the bail application filed by the 2<sup>nd</sup> respondent as directed above, the 2<sup>nd</sup> respondent will continue to enjoy the benefits of Annexure-A2 order.

**Sd/-  
GOPINATH P.  
JUDGE**

ats

CrL.M.C. NO.6578 OF 2023

6

**APPENDIX OF CRL.MC 6578/2023**

PETITIONER'S ANNEXURES

Annexure A1 COPY OF THE FIR DATED 21/07/2023 (SEALED COVER)

Annexure A2 COPY OF THE ORDER DATED 3/8/2023

Annexure A3 True copy of the changed FIR dated FIR No  
1173/2023 dated 21/07/2023(Sealed Cover)

RESPONDENT ANNEXURES

Annexure-R2(c) A true copy of the receipt of the complaint dated  
30.07.2023 before DYSP Kottarakara