

'Court Cannot Be Swayed By Public Outcry': Kerala High Court Grants Pre-Arrest Bail To 3 KSRTC Employees In Assault Case

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM
BECHU KURIAN THOMAS, J.**

4 November, 2022

B.A.No.8132 of 2022 & B.A.No.7837 of 2022

MILAN DORICH *versus* STATE OF KERALA

Petitioners / Accused by advs. Suman Chakravarthy, K.R. Rija, Amjath A.R, K.K. Dheerendrakrishnan, R. Gopan, N.P. Asha

Respondent / State by Noushad K.A., M.K. Pushpalatha, Public Prosecutors

ORDER

These are applications seeking pre-arrest bail filed under Section 438 of the Code of Criminal Procedure, 1973.

2. Petitioners in B.A.No.8132/2022, are accused Nos. 1 & 3 while the petitioner in B.A.No.7837/2022, is accused No.2 (wrongly mentioned as accused No.3 in the bail application) in Crime No.849/2022 of Kattakkada Police Station, alleging offences punishable under Sections 294(b), 341, 342, 323, 324 and 354 r/w Section 34 of Indian Penal Code, 1860.

3. According to the prosecution, 1st accused is the station master of the KSRTC Aryanad depot, while 2nd accused is a clerk and the 3rd accused is a conductor employed with the Kerala State Road Transport Corporation (KSRTC). Petitioners along with other accused formed themselves into an unlawful assembly on 20.09.2022 and verbally abused and assaulted the *defacto* complainant and his daughter who had approached them to renew a concession certificate. Though initially, the offence under Section 354 IPC was not included, subsequently, on the basis of the statement of the daughter of the *defacto* complainant, the offence under the said Section was also added, alleging that the accused had outraged the modesty of the *defacto* complainant's daughter.

4. Sri.Suman Chakravarthy and Sri.K.K.Dheerendrakrishnan, the learned counsel for the petitioners in the respective bail applications contended that petitioners are innocent of the crime. It was submitted that due to public outrage based on a distorted video and due to wrong media publicity, petitioners have been arrayed as accused, alleging non bailable offences. The learned counsel further contended that no overt acts have been alleged against the petitioners which would fall within the contours of Section 354 IPC and that the said Section has been incorporated with oblique motives. It was also submitted that petitioners are willing to abide by any conditions that may be imposed upon them.

5. Sri.Noushad.K.A and Smt.M.K.Pushpalatha, the learned Public Prosecutors, opposed the grant of bail and contended that the allegations are serious and that petitioners are alleged to have assaulted and outraged the modesty of the *defacto* complainant and his daughter on 20.09.2022. The Prosecutor also pointed out that the video of the incident had been leaked out to the media and that there was a public outrage over the incident. The learned Public Prosecutors vehemently contended that, if petitioners are released on anticipatory bail, the same will sent a wrong message to the public.

6. I have considered the rival contentions and have also perused the statement of the *defacto* complainant as well as that of his daughter, given on 20.09.2022. On the request of the counsel for the petitioners, I have watched the video of the incident as retrieved by the Investigating Officer and handed over by the learned Public Prosecutors.

7. Even though the video of the incident had been leaked through the media and had gone viral, creating a public outcry against the incident, this Court ought not and cannot be swayed by such sentiments and has to strictly confine itself to the allegations and the statements given by the witnesses and its legal implications.

8. The only non bailable offence alleged against the petitioners is that under Section 354 IPC, which relates to outraging the modesty of a woman. The remaining offences are admittedly, all bailable.

9. The ingredient necessary for making out an offence under Section 354 of IPC is “assault or use of criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty” (emphasis supplied). Reference in this context to the decisions in ***Sasidharan v. State of Kerala [2005(3) KLT 185]*** and ***Vijayan v. State of Kerala [2021(1)KLT SN 4]*** are relevant. In those decisions it has been held that the assault contemplated under Section 354 must be on a woman and must have been used with an intention to outrage her modesty.

10. What constitutes an outrage to a woman’s modesty has not been defined. It has to be decided on the basis of the circumstances of each case. However, in the decision in ***State of Punjab v. Major Singh [AIR 1967 SC 63]***, the Hon’ble Supreme Court had held that the essence of a woman’s modesty is her sex and the crux of the offence lies in the culpable intention of the accused.

11. With the aforesaid legal principles in mind, when the statements of the *defacto* complainant and that of his daughter are perused, it is seen that though there was a melee between the *defacto* complainant and the accused, the daughter of the *defacto* complainant fell down when she came to the rescue of her father after he was pushed into a room. The *defacto* complainant’s daughter has further stated that one the accused who was wearing a dark blue shirt and trousers, had hit her father on his chest and that after arranging an autorickshaw to take her father to the hospital, she went along with her friend for writing the examination. She also stated that in the push and pull that occurred, she felt pain over her body but asserted that none had hit her. She also stated she can recognize the person who had brushed aside her hand.

12. Considering the entire circumstances as revealed from the statements of the *defacto* complainant and that of his daughter and the legal principles noticed earlier, I am of the view that, though the conduct of the accused is to be strongly deprecated and condemned custodial interrogation of the petitioners is not essential. Limited custody of the petitioners for the purpose of interrogation will be sufficient for the purpose of proceeding with the investigation.

13. Therefore, on a consideration of the circumstances arising in the case, I am of the view that even though the allegations are serious in nature, the petitioners are entitled to be released on bail in the event of their arrest on conditions, since custodial interrogation is not required.

Accordingly, this application is allowed on the following conditions:

a) petitioners shall appear before the Investigating Officer on 10.11.2022 and subject themselves to interrogation between 9.00 am to 6.00 pm. If the interrogation is not

completed on 10.11.2022, the Investigating Officer will be at liberty to direct appearance of the petitioners on any other day of his choice for further interrogation.

- b) If after interrogation, the Investigating Officer proposes to arrest the petitioners, then, they shall be released on bail on them executing a bond for Rs.50,000/- (Rupees fifty thousand only) each with two solvent sureties each for the like sum before the Investigating Officer.
- c) Petitioners shall appear before the Investigating Officer as and when required and shall also co-operate with the investigation.
- d) Petitioners shall not intimidate or attempt to influence the witnesses; nor shall he tamper with the evidence or contact the *defacto* complainant or his family members;
- e) Petitioners shall not commit any similar offences while they were on bail.
- f) Petitioners shall not leave India without the permission of the Court having jurisdiction.

In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with the law, notwithstanding the bail having been granted by this Court.

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