

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 16TH DAY OF MARCH 2021 / 25TH PHALGUNA, 1942

Bail Appl..No.251 OF 2021

CRIME NO.0726/2020 OF Chengamanad Police Station , Ernakulam

PETITIONER/S:

- 1 DHANESH PRABHAKARAN, AGED 38 YEARS
PEECHAMPILLI HOUSE, KODUSSERRY,
VATTAPPARAMBU.P.O, ALUVA, 683579
- 2 ARUN ARAVIND, AGED 32 YEARS
VYMELI HOUSE, VATTAPPARAMBU.P.O, KARIPPASSERY
683579
- 3 SUJAY SUBRAHMANIAN, AGED 39 YEARS
PINDANI, VATTAPPARAMBU.P.O,
KODISSERY, ALUVA, PIN-683579.
- 4 LENIN.T.A, AGED 38 YEARS
KUNJATHAN HOUSE, THRIKKALLOOR
PARAMBU, KURUMASSERY.P.O., PIN 683579.

BY ADVS.

SMT.E.S.SONI

SRI.R.KRISHNA RAJ

SMT.KUMARI SANGEETHA S.NAIR

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, 682031
- 2 JOY, AGED 49 YEARS, KODIYAN HOUSE,
THUMBANASSERY, KAKKULASSERY, MALA, PIN - 680732.

R1 BY PUBLIC PROSECUTOR

R2 BY ADV. SRI.ENOCH DAVID SIMON JOEL

R2 BY ADV. SRI.S.SREEDEV

R2 BY ADV. SRI.RONY JOSE

R2 BY ADV. SHRI.CIMIL CHERIAN KOTTALIL

OTHER PRESENT:

SRI.SANTHOSH PETER SR PP

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
26.02.2021, THE COURT ON 16.03.2021 PASSED THE FOLLOWING:

O R D E R

Dated this the 16th day of March 2021

Application filed under Section 438 of Cr.P.C for anticipatory bail.

2. The applicants are accused in Crime No.726/2020 of Chengamanad Police Station for having allegedly committed offences punishable under Sections 153 and 506 read Section 34 of the I.P.C.

3. The prosecution case, in brief, is that accused 1 to 4 had on 20/12/2020 at about 4 PM, in furtherance of common intention to promote enmity between different groups on the grounds of religion and the malignancy, wantonly provoked the de facto complainant who is conducting a bakery under the name and style Modi Bakery at Kurumassery junction and intimidated Mithun, an employee of the bakery and served a notice prepared on the letterhead of 'Hindu Aikyavedi'

precluding the bakery from exhibiting a sticker indicating that halal food is being served in the bakery. The halal sticker was directed to be removed within 7 days in failure of which, threat of boycott of the bakery and organising protests by the Hindu Aikyavedi was made. On the basis of a complaint filed by the owner of the bakery, the crime was registered.

4. The applicants apprehend arrest and have therefore approach this Court for anticipatory bail. It is stated that Parakadavu panchayat, where the bakery is situated has only 7 Muslim families from out of a total population of 36,000. The staff of the bakery informed the 2nd applicant that they are selling only halal food in the bakery. In that case, the 2nd applicant insisted that the sticker should be, 'halal foods only'. The bakery cannot force halal food on Hindus residing in that area and that is the reason why the applicants insisted on removing the sticker and intimated that they would protest such activities of the bakery. Immediately the sticker was

removed. It is at the instance of political parties like the CPM and SDPI, that the crime has been registered. It is now understood that an offence under Sections 153A and 295A of the I.P.C are intended to be incorporated in the F.I.R. Hence, the applicants seek pre-arrest bail.

5. The offences alleged against the applicants at present are only under Sections 153 and 506 I.P.C. Both the offences are bailable and hence, application under Section 438 of Cr.P.C for anticipatory bail is not maintainable. But the applicants apprehend that the non-bailable Sections of 153A and 295A IPC may be incorporated with the intention to incarcerate the applicants. And hence, the learned counsel Sri R Krishna Raj appearing for the applicants submits that the applicants are entitled to pre-arrest bail.

6. The learned Sr. Public Prosecutor Sri.Santhosh Peter does not deny the possibility of Sections 153A and 295A I.P.C being incorporated in the crime. Under the circumstances, it

has to be examined whether the applicants are entitled to pre-arrest bail.

7. In order to attract an offence punishable under Section 153-A I.P.C the accused must by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, or grounds of religion, race, place of birth, residence, language, caste or community or any other ground, whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or caste or communities, or commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity.

8. Similarly to attract an offence under Section 295-A I.P.C, there must be a deliberate and malicious Act intended to outrage religious feelings of any class by insulting its religion

or religious beliefs.

9. A reading of the F.I.R does not indicate such an act on the part of the applicants. Nothing was done by them to promote hatred between two groups. The de facto complainant has appeared through counsel and has submitted that he has no objections in granting anticipatory bail to the applicants. The sticker which was found offending to the applicants was already removed by the de facto complainant from his bakery.

10. Even though Section 153-A or 295-A IPC is not incorporated in the F.I.R, the recitals in the F.I.R indicate that the act of the applicants was intended to promote disharmony between two religious groups. Under the circumstances, there is a possibility of incorporating those non-bailable offences in the F.I.R. The apprehension of arrest expressed by the applicants is therefore, reasonable. Hence, I find that the applicants are entitled to pre-arrest bail.

The bail application is allowed and in the event of their

arrest, the applicants shall be released on bail on execution of bond for ₹ 50,000 (Rupees fifty thousand only) each with two solvent sureties for like amount each to the satisfaction of the arresting officer subject to the conditions under Section 438 (2) Cr.P.C.

Sd/-

ASHOK MENON
JUDGE

jg