

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 18TH DAY OF NOVEMBER 2019 / 27TH KARTHIKA, 1941

Bail Appl..No.7883 OF 2019

CRIME NO.130/2019 OF KADAMPUZHA POLICE STATION, MALAPPURAM

PETITIONER/ACCUSED:

MUFLIH,
AGED 18 YEARS
S/O HUSSAIN V.K, VALLIKKADAN HOUSE, CHERUSOOLA P.O.,
THENNALA, MALAPPURAM DISTRICT, PIN-676 510.

BY ADVS.
SRI.M.AJAY
SRI.K.R.RAJKUMAR

RESPONDENTS:

- 1 STATE OF KERALA
(REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF
KERALA), OFFICE OF THE ADVOCATE GENERAL, HIGH COURT
BUILDINGS, ERNAKULAM, PIN-682 018.
- 2 THE SUB INSPECTOR OF POLICE
KADAMPUZHA POLICE STATION, KADAMPUZHA, MALAPPURAM
DISTRICT, PIN-676 553.
- 3 THE DISTRICT POLICE CHIEF,
DPO, UP HILL, MALAPPURAM, PIN-676 505.

SRI RAMESH CHAND, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
18.11.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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ORDER

The applicant herein is the accused in Crime No.130 of 2019 of the Kadampuzha Police Station. He is accused of having committed offence punishable under sections 353, 332, 333, 324 and 326 of the I.P.C. He has approached this Court invoking the powers under Section 438 of the Cr.P.C.

2. Brief facts which are to be noticed for considering the prayer sought for in this petition are that on 10.10.2019, the Motor Vehicle Inspector attached to the Enforcement Squad, Malappuram, along with two Assistant Motor Vehicle Inspectors were conducting vehicle checking on the National Highway at Randathani. The applicant, a young man aged 18 years, along with his friend Farhan, aged 16 years, were found coming from North to South on a bike along the National Highway at Randathani. The applicant was seen riding without a helmet. In order to slap a challan, he was signalled to stop the vehicle. It is alleged that without stopping the bike the

applicant intentionally proceeded forward and dashed the de facto complainant on his left leg in an attempt to escape. The de facto complainant was thrown to the tarmac by the impact. The motor cycle went on to hit a motor car coming from the opposite side and the rider and his friend fell on the road. It is alleged that the applicant had full knowledge that unless he dashed the officer down, he will not be in a position to escape and with that objective, the applicant accelerated the bike and dashed the officer causing serious injuries including fracture of his leg.

3. Sri.M.Ajay, the learned counsel appearing for the applicant, submitted that the very registration of the crime against the applicant portraying him as an accused is based on distorted facts. The learned counsel would point out that the width of the National Highway where the accident took place was about 8 metres and the road margins on either sides were in excess of 4 metres. While the applicant, who is having a valid licence, was travelling on his bike along the National Highway, wherein the navigable speed is fixed at 60km/hr, the Motor Vehicle Inspector rushed in abruptly and caught the handlebar of the bike, apparently under the belief that the applicant would sneak away. Because of the abrupt and unexpected

act on the part of the de facto complainant, the applicant lost his balance and swerved to the middle of the road and dashed on a car travelling from south to north. According to the learned counsel, the applicant as well as the pillion rider sustained serious injuries. He has also placed reliance on Annexure-IV and V medical certificates to bolster his submission. It is urged that if the Motor Vehicle Inspector did not jump on to the middle of the road to catch hold of the handlebar of the running bike, the accident would never have happened. He referred to a series of circulars issued by the State Police Chief and it was argued that though prompt detection of traffic offenses and enforcement of traffic rules are to be implemented with all seriousness, it is not for the officers to catch offenders by surprise by putting to peril the life of the officer and also the traffic offender.

4. The learned Public Prosecutor has strenuously opposed the prayer. It is submitted that the materials collected by the prosecution show that the applicant herein slowed down the bike on seeing the signal given by the officer and when the de facto complainant approached him, he accelerated the bike and after dashing down the officer, swerved to the right at high speed. The applicant lost his balance and hit a car coming from the opposite side.

He would refer to the wound certificate of the de facto complainant and it is urged that serious injuries were caused to officer who was just performing his duty. The learned Public Prosecutor has also made available a short clip of the accident recorded on a cam placed in a shop near to the place of accident which provides details of the manner in which the incident had occurred.

5. I have considered the submissions advanced and have anxiously perused the entire materials which were made available by both sides.

6. In the case on hand, it is stated in the FI statement itself that the vehicle was signalled to stop by the Motor Vehicle Inspector as the applicant was found riding the bike without wearing a helmet. The scene mahazar reveals that the road margin at the place of accident is not less than 4 metres on either sides. The applicant has a contention that the officer had abruptly entered the carriageway to physically intercept the bike and as he was travelling at a speed, he impulsively swerved to the right after hitting the de facto complainant and crashed into the car. Though there are some materials which persuade me to accept the version of the applicant, I do not think that entering upon such a finding in this petition is warranted in the

circumstances. These are all matters which are to be considered by the trial court after examining the evidence. I find from the records that the applicant had also sustained injuries and was admitted in the hospital for quite some time. The officer has also suffered serious injuries. The records reveal that investigation has progressed to the final stages. The incident happened in public road and there is no case for the prosecution that the incident was premeditated. Furthermore, the applicant is aged 18 years with no criminal antecedents and there cannot be any apprehension that he would make himself scarce. In the facts and circumstances, I do not think that the custodial interrogation of the applicant is required in the instant case.

7. Having gone through the records and the materials which were made available by the learned Public Prosecutor, I have no doubt that the incident had happened solely because of the antiquated methods still being used by the Motor Vehicles Department and the Police for detecting Traffic Offences. It is high time that equipment like digital camera, traffic surveillance camera, mobile phone cameras over even hand held video cameras are used by police officers as well as other officers to detect traffic offences. If such methods are used, there will be fool proof evidence to initiate legal action against the

offender. If a person drives past at breakneck speed without wearing a helmet or if he does not stop a vehicle on being signalled, the registration number can be recorded and the details of the vehicle can be transmitted through wireless or any other mode and he can very well be intercepted. If the Rules permit, barricades can also be placed to slow down the vehicles. For carrying out routine checks to curb traffic offences, the Motor Vehicles Inspector or the Police Officers will be well advised to carry out the checks in pre-announced and well-marked fixed points as stated in the Circular No.6/2012 dated 28.03.2012 issued by the State Police Chief. The objective is not to catch people by surprise but to educate the people in safety habits. Whatever happens, the officers are not expected to make an attempt to physically stop vehicles by jumping on to the middle of the road expecting the driver of the offending vehicle to stop. Under no circumstances shall a two wheeler rider be pursued in a "hot chase" for booking him for not wearing a helmet as this is likely to put the life of the officer and the traffic offender to peril. Several lives have been lost by these adventurous acts and it is high time that remedial measures are taken.

8. The Motor Vehicles (Driving) Regulations, 2017, which replaced the Road Regulations, 1989, has given the manner in which vehicles are to be stopped by a Police officer in uniform or an authorised officer of the State Government. Rule 24 of the Driving Regulations is illuminating. It speaks about mandatory orders. The same is extracted herein below for easy reference.

24. Mandatory orders:- (1) A police officer in uniform or an authorised officer of the State Government may stop a motor vehicle by giving a signal by means of technical device on the vehicle or a signalling disc or a red light for verifying the certificate of fitness of the vehicle or for collecting required information in respect of the vehicle or the driver or other occupants of the vehicle, and the vehicle owner or driver shall comply with the instructions given by such officer.

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Therefore the Rules specifically provide for stopping a vehicle by using signaling devices and not by physically obstructing the passage of vehicles.

9. Though in the Circular issued by the State Police Chief as early as in the year 2012, the police officers and the officers empowered by the State Government were exhorted to use digital means for detecting traffic related cases, it appears that those directions have remained in paper and have not yet been implemented. It is high time that the authorities take steps to adopt modern technology for detection of traffic offences.

10. Having considered all the relevant facts, I am inclined to allow this application on the following conditions. The applicant shall be released on bail on his executing a bond for Rs.50,000/- (Rupees Fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the court having jurisdiction. The above order shall be subject to the following conditions:

- 1). The applicant shall appear before the Investigating Officer on all Saturdays between 9 a.m. and 11 a.m., for a period of two months or till final report is filed, whichever is earlier.
- 2). He shall not intimidate or attempt to influence the witnesses; nor shall he tamper with the evidence.
- 3).He shall not commit any similar offence while on bail.

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.

sd/-

**RAJA VIJAYARAGHAVAN V.,
JUDGE**

PS/18/11/2019