

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

WEDNESDAY, THE 13TH DAY OF OCTOBER 2021 / 21ST ASWINA, 1943

BAIL APPL. NO. 2019 OF 2021

CRIME NO.16/2021 OF KAIPAMANGALAM POLICE STATION, THRISSUR

PETITIONERS/ACCUSED:

- 1 PRAJEESH P S
AGED 34 YEARS, POTTEKKATT HOUSE, P.O. CHENTRAPPINNI, PIN - 680687
- 2 RAJITH M R
AGED 36 YEARS, S/O RAJAN, MALAYATTIL HOUSE, CHENTRAPPINNI PIN - 680687

BY ADVS.
T.S.SARATH
SRI.R.RAJESH (VARKALA)
SRI.M.KIRANLAL
SRI.MANU RAMACHANDRAN
SHRI.SAMEER M NAIR

RESPONDENTS/ADDL.R2:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, PIN - 682031
- 2 ADDL.R2. SUVILAL
AGED 37 YEARS, KOROTHU HOUSE, KOOTTALAPPARAMB DESOM,
EDATHIRUTHY VILLAGE, THRISSUR RURAL, PIN - 680623.
IS IMPEADED AS PER THE ORDER DATED 30.3.2021 IN
CRL.M.A.NO.1/2021.

BY ADVS.
SHIBI.K.P.
C.K.SUNIL

SR.PP - SRI. RENJITH T.R.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17.9.2021,
ALONG WITH Bail Appl.2020/2021, THE COURT ON 13.10.2021 DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

WEDNESDAY, THE 13TH DAY OF OCTOBER 2021 / 21ST ASWINA, 1943

BAIL APPL. NO. 2020 OF 2021

CRIME NO.16/2021 OF KAIPAMANGALAM POLICE STATION, THRISSUR

PETITIONERS/ACCUSED:

- 1 ARUN K J, AGED 30 YEARS
 KOLANDRA HOUSE, CHAZOOR P.O., PIN - 680687
- 2 SOORAJ S
 AGED 24 YEARS, S/O BALAN NAIR, CHERUPARAMBATH HOUSE,
 CHENTHRAPINNI P.O., THRISSUR, PIN - 680687

BY ADVS.T.S.SARATH
SRI.R.RAJESH (VARKALA)
SRI.M.KIRANLAL
SRI.MANU RAMACHANDRAN
SHRI.SAMEER M NAIR

RESPONDENTS/ADDL.R2:

- 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH
 COURT OF KERALA, ERNAKULAM, PIN - 682031
2. ADDL.R2 SUVILAL
 AGED 37 YEARS,
 KOROTTU HOUSE,
 KOOTTALAPPARAMBU DESOM,
 EDATHIRUTHY VILLAGE,
 THRISSUR RURAL, PIN - 680623.
 IS IMPEADED AS PER THE ORDER DATED 30.3.2021 IN
 CRL.M.A.NO.2/2021.

SR. PP -SRI. RENJITH T.R.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
17.9.2021 ALONG WITH Bail Appl..2019/2021, THE COURT ON
13.10.2021, DELIVERED THE FOLLOWING:

ORDER

These are applications filed under Section 438 of the Code of Criminal Procedure moved by accused Nos.1 to 3, 5 and 6 in crime 16/2021 of Kaipamangalam police station. Petitioners in BA.2019/2021 are accused Nos.5 and 6 whereas accused 1 to 3 have moved BA. 2020/2021. The crime was registered on 3/1/2021 alleging offence under Sections 141, 143, 147, 341, 323, 324, read with 149 of IPC on the strength of the first information statement given by Suvilal, who has been impleaded as additional 2nd respondent in both the applications. In the first information statement, which was given while undergoing treatment in Elite Hospital, Thrissur, he has stated as follow: On the previous day, that is on 2/1/2021 from 18.30 hours to 20.30 hours he was assaulted by the accused persons, four of whom have been named along with four identifiable persons. He is a lorry driver by profession. On 2/1/2021 at about 5:30 PM he had taken his dog for stroll to the paddy field on the east of his house. While the dog was getting relieved, the first accused Arun and others told him that it is not the place where dogs have to be taken for relieving. Immediately he returned to his house. Later, at 6:20 PM, Arun and Murukan reached his house in a motorbike and solicited him to accompany them to the paddy

field for spending some time there. Even though he was not willing, offering to take him back soon, he was taken in the motorcycle to the paddy field. After dropping him near the south eastern side of the paddy field, he was brutally manhandled by the accused persons. He was stamped by the 2nd accused Sooraj on his chest. All of them assaulted him brutally; blood was oozing from his nose. Later, at 8:30 PM Arun took him to his house and threatened that if it is revealed to anyone he will be assaulted. He belongs to Hindu Vettuva community. This is the basis for registering the crime. During the course of investigation offence under Sections 294(b), 506(ii), 326 and 308 of IPC besides under Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, for short the Act, has been incorporated.

2. Petitioners contend that they are totally innocent. The incident was not happened as alleged by the prosecution, that pursuant to the interim order granted by this Court they had surrendered before the Investigating Officer and were granted bail, that all the recoveries have been effected and custodial interrogation of the petitioners is not warranted. According to the learned counsel for the petitioners, there is absolutely no basis for incorporating provisions under the Act.

3. I heard the learned counsel for the additional 2nd respondent and also the learned Senior Public Prosecutor.

4. According to them, the 1st accused has criminal antecedents. He is involved in five cases including one alleging offence under Section 307 IPC, four cases in Mathilakam police station and one in Kaipamangalam police station. As directed by this Court, the present Investigating Officer the the Deputy Superintendent of police Kodungallur Sub Division has filed a statement also opposing the applications for bail.

5. After hearing counsel on both sides, for numerous reasons the custodial interrogation of the petitioners is not warranted. Firstly, as stated earlier, on the basis of an incident that had happened on 2/1/2021 crime was registered on 3/1/2021 itself. From the statement it is clear that except a few identifiable persons all were acquaintances of the additional 2nd respondent. It is also evident that the incident had commenced after 6.20 PM on a peaceful note, the informant had accompanied them as solicited, in a motorbike. Thereafter he was dropped back to his house in the same bike. Whatever it may be, it is evident from the statement of the Investigating Officer that he has suffered grievous hurt by way of fracture in zygomatic bone. Therefore there is justification in incorporating Section

326 IPC. But mainly for two reasons the petitioners are not liable to be interrogated in custody. By order of this Court dated 04.5.2021, all the four petitioners were granted anticipatory bail for a limited period. Pursuant to the said order, they had surrendered before the Investigating Officer and made themselves available for interrogation. From the statement of the Investigating Officer it is clear that the scooter KL-75-837, which was used for taking the informant to the place of occurrence, and the wooden stick allegedly used by the 1st accused were recovered by the police. That means, recoveries have been effected after interrogating the petitioners.

6. Arresting an accused and interrogating him in custody should have a purpose. If the purpose is over, there is no meaning in rejecting the application for anticipatory bail. Arrest and detention cannot be taken as a luxury for the prosecution.

7. Secondly, now the question is whether due to incorporation of Section 3(2)(va) of the Act, the application should be dismissed by virtue of the bar under Section 18 of the Act. Here also, the arguments of learned counsel for the 2nd respondent cannot be sustained. Of course, if there is fool proof prima facie case attracting offence under the Act, the embargo under Section 18 will come into play. But, at least for the present, there are

no reasons to invoke provisions under the Act against the petitioners. As noticed earlier, merely for the reason that he had stated that he belongs to Hindu Vettuva community, unless overwhelming reasons are made, the provisions of the said Act cannot be invoked. The party respondent has no case that he was assaulted, humiliated or injured owing to the reason that he belongs to Vettuva community. Slightest inference is possible from the first information statement that he was humiliated for that purpose. Moreover, he was taken to the paddy field from his home in a cordial atmosphere. It is not known as to what happened between 6:20 PM and 8:30 PM for which the investigation is underway.

8. In the decision reported in **Dr. Subhash Kashinath Mahajan v. The State of Maharashtra (AIR 2018 SC 1498)**, the Apex Court has held that the bar under Section 18 of the Act to grant anticipatory bail is not absolute and it would apply only if prima facie case of commission of offences under the Act are made out; if allegations of offence are found to be prima facie motivated and fails, exclusion of jurisdiction under Section 438 of the Cr.P.C. would not apply. This has been reiterated by the Apex Court in the subsequent decisions also.

9. After analysing the materials on record, I have no doubt in my mind that incorporation of the provisions under the Act cannot justify to deny anticipatory bail to the petitioners.

In the result, both the applications are allowed. The petitioners are at liberty to surrender before the Investigating Officer within ten days from today and in the event of arrest they shall be released on bail on executing bond for Rs.50,000/- (Rupees fifty thousand only) each with two solvent sureties each for the like sum to the satisfaction of the Investigating Officer; they shall co-operate with the investigation, shall appear before the Investigating Officer as and when necessary, shall not try to contact or influence the witnesses or tamper with the evidence and shall not involve in any crime during the period on bail.

Bail applications are allowed as above.

Sd/-

K. HARIPAL
JUDGE

okb/8.10

//True copy// P.S. to Judge