

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

Bail Appl..No. 51 of 2015 ()

CRIME NO. 1/2015 OF KODANCHERY POLICE STATION , KOZHIKODE DISTRICT

PETITIONER(S)/ACCUSED :

1. BENNY THOMAS, S/O.THOMAS,AGED 50 YEARS,
NADUVILEDATH PUTHANPURAYIL HOUSE,
MAIKKAV P.O., THAMARASSERY, KOZHIKODE DISTRICT.
2. KURIAKOSE K.A., AGED 48 YEARS,
S/O.ABRAHAM, KUDIYIRIKKAL HOUSE, MAIKKAV P.O.,
THAMARASSERY, KOZHIKODE DISTRICT.
3. SHAJU K.G., AGED 38 YEARS,
S/O.GEORGE, KOTTARAKUNNEL HOUSE, MAIKKAV P.O.,
THAMARASSERY, KOZHIKODE DISTRICT.
4. ROY N.J., AGED 40 YEARS,S/O.JOSEPH,
NADUVILEDATH HOUSE, PUTHANPURAYIL HOUSE,
MAIKKAV P.O., THAMARASSERY, KOZHIKODE DISTRICT.
5. JOHNY JOSEPH @ DOMINIC, AGED 46 YEARS,
S/O.JOSEPH, NADUVILEDATH PUTHENPURAYIL HOUSE,
MAIKKAV P.O., THAMARASSERY, KOZHIKODE DISTRICT.
6. ROY K.G., AGED 46 YEARS,
S/O.GEORGE, KOTTARAKUNNEL HOUSE, MAIKKAV P.O.,
THAMARASSERY, KOZHIKODE DISTRICT.

BY SRI.RENJITH THAMPAN,SENIOR ADVOCATE

RESPONDENT(S)/COMPLAINANT & STATE :

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.
2. THE SUB INSPECTOR OF POLICE,
KODANCHERY POLICE STATION,
KOZHIKODE DISTRICT-673 580.

BY PUBLIC PROSECUTOR SMT. LALIZA.T.Y.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 05-02-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

B. KEMAL PASHA, J.

.....
B.A. No.51 of 2015
.....

Dated this the 5th day of February, 2015

ORDER

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Petition under Section 438 Cr.P.C.

2. Petitioners are the accused in Crime No.1/2015 of Kodanchery Police Station, Kozhikode district, registered for the offences punishable under Sections 342, 323, 324 and 308 read with Section 34 IPC.

3. On 01.01.2015 at 10.30 a.m., while the *defacto complainant* was walking through the road, he could see the 1st accused riding on his motor bike in a tremendous speed and rushing towards him, out of his previous enmity, with a view to causing his death. He jumped aside and even then, A1 hit on his body with the motor bike. He fell down and thereafter, A1 hit him with a granite stone on his head. He was severely beaten up. It is alleged that A2 and A3 caught hold of him, thereby enabling A1 to attack him. When he

was taken to the hospital, it is alleged that, A4, A5 and A6 obstructed the vehicle and did not permit him to be taken to the hospital.

4. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

5. The contents of the CD *prima facie* reveal the complicity of A1. It seems that the *defacto complainant* has sustained injuries in the incident. It cannot be said that the offence under Section 308 IPC cannot be attracted as far as A1 is concerned. As far as the other petitioners are concerned, it seems that they had only aided A1. There is no allegation that they have made use of any weapon. Considering the lesser acts played by A2 to A6 and in the absence of any criminal antecedents on their part, I am of the view that they can be granted anticipatory bail. At the same time, considering the seriousness of the allegations against A1, I am of the view that he is not entitled to the discretionary relief of anticipatory bail.

6. In the result, this bail application is allowed in part and the investigating officer or such other police officer, who is conducting the arrest of petitioners 2 to 6, is directed to enlarge them on bail in the event of their arrest on each of them executing a bond for ₹25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the officer conducting arrest, and subject to the following terms and conditions:-

(i) Petitioners 2 to 6 shall report before the investigating officer in between 9 a.m. and 11 a.m. on all Thursday and Mondays commencing from 12.02.2015 for a period of three months or till the filing of the final report in this case, whichever is earlier.

(ii) Petitioners 2 to 6 shall not tamper with the evidence or influence witnesses.

(iii) Petitioners 2 to 6 shall make themselves available for interrogation as and when required by the investigating officer.

(iv) Petitioners 2 to 6 shall not involve in any offence while on bail.

It is made clear that the violation of any of the conditions stipulated above will result in the cancellation of bail.

As far as the 1st petitioner is concerned, this bail application is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/05/02

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PA to Judge