

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

Bail Appl..No.267 of 2015

CRIME NO.1033/2014 OF MUVATTUPUZHA POLICE STATION,ERNAKULAM.

PETITIONER'S/ACCUSED:

1. JABBAR,AGED 41 YEARS,S/O.PAREETH,
VALIYAVEETIL HOUSE,PANAYIKULAM P.O.
ALANGAD VILLAGE,ERNAKULAM.
2. SHAHITHA,AGED 37 YEARS,D/O.PAREETH,
VALIYAVEETIL HOUSE,PANAYIKULAM P.O.
ALANGAD VILLAGE,ERNAKULAM.

BY ADV.SMT.P.R.REENA

RESPONDENT'S/COMPLAINANT & STATE:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM,PIN - 682 031.
2. SUB INSPECTOR OF POLICE,
BINANIPURAM POLICE STATION,
ERNAKULAM DISTRICT,PIN - 683 502.

BY PUBLIC PROSECUTOR SMT.REMA.R.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 26-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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K. ABRAHAM MATHEW, J.

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B.A.No. 267 of 2015

Dated this the 26th day of June, 2015

O R D E R

Petitioners are accused 1 and 3 in Crime No. 1033 of 2014 of Binanipuram Police Station registered for the offences under Section 323 IPC and Section 31 of the Protection of Women from Domestic Violence Act, 2005. They are brother and sister. The wife of the first petitioner filed an application against them and the co-accused under Section 12 of the Protection of Women from Domestic Violence Act, 2005. Learned Magistrate passed an interim order on 05.05.2014. The petitioners herein were prohibited from alienating or encumbering the shared household and also from committing “any sort of domestic violence” against the petitioner in the M.C. A case has been registered against the petitioners on the allegation that in violation of the interim order they assaulted the petitioner in the M.C. and thereby they have committed the offences under Section 323 IPC and Section 31(1) of the Protection of Women from Domestic Violence Act. They pray that they may granted anticipatory bail.

2. Section 323 IPC is a bailable offence. The offence under Section 31(1) of the Protection of Women from Domestic Violence Act, 2005 is a cognizable and non-bailable offence though it is punishable only with imprisonment which may extend to one year or with fine which may extend to Rs.20,000/- or with both. But to attract the section the order passed by the Magistrate should be a protection order passed under Section 18 of the Act. It may be interim or final order. Violation of an order passed under any other section does not amount to an offence.

3. The direction in the impugned order not to alienate or encumber the properties is a protection order covered by Section 18(e) of the Act. But there is no allegation that the petitioners herein have committed breach of this direction.

4. The other direction is that they shall not commit any domestic violence, which obviously was passed under Section 18(a) of the Act. This is not a specific order.

5. Passing a general or vague order like the present one under Section 18(a) may result in unfortunate consequences. If such an order is passed breach of the direction granting residential order under Section 19 or monetary relief under Section 20 or compensation order under Section 21 or custody order under Section 22 also will become punishable under Section

31(1), which is not contemplated by the Act. If a blanket order is passed, even failure to pay maintenance will attract Section 31(1). So while passing an order under Section 18(a) of the Act Magistrates shall not direct that the respondent is prohibited from doing any act of domestic violence; the act sought to be prohibited shall be specifically stated in the order, the nature of which shall depend on the facts alleged in the petition.

This is a fit case to grant anticipatory bail. In the result, this application is allowed.

The petitioners shall be released on bail on their executing a bond for Rs.20,000/- (Rupees twenty thousand only) each with two solvent sureties each for the like sum if they are arrested by the Police in connection with this case.

Sd/-
K. ABRAHAM MATHEW,
JUDGE

DST

//True copy//

P.A. To Judge