

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

Bail Appl..No. 919 of 2015 ()

CRIME NO. NOT KNOWN OF PAYYAVOOR POLICE STATION, KANNUR DISTRICT.

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PETITIONER/ACCUSED:

**AYYAPPAN NAIR, S/O. KUNHAPPAN NAIR,
AGED 69 YEARS, PATTAMMARIL HOUSE,
VANCHIAM, PAYYAFVOOR AMSOM,
TALIPARAMBA TALUK, KANNUR DISTRICT.**

**BY ADVS.SRI.V.A.SATHEESH,
SRI.V.T.MADHAVANUNNI.**

RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
THROUGH S.H.O., PAYYAVOOR POLICE STATION,
KANNUR DISTRICT-670 503.**

BY PUBLIC PROSECUTOR SRI.V.S. SREEJITH.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 19-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

K. HARILAL, J.

B.A. No.919 of 2015

Dated this the 19th day of June, 2015

ORDER

This is an application for anticipatory bail filed under Section 438 of the Code of Criminal Procedure.

2. The petitioner is the sole accused in Crime No.26 of 2015 of Payyannur Police Station, registered for the commission of the offences punishable under Sections 448, 341, 323 read with Section 34 of the Indian Penal Code and Section 3(i) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

3. The allegation against the petitioner is that on 24.01.2015 while the petitioner was travelling on a motor bike, along with his friend by name Vinod Kumar, they stopped the bike on seeing one of his friends. At that time, the petitioner has come forward to them and with an intention to humiliate the de facto complainant, abused him calling his caste name and thereafter caught hold of his neck and beat on the left side of his body, threatened

him and thereby committed the offences alleged against him.

4. The learned counsel for the petitioner submits that all the offences, except the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 alleged against the petitioner, are bailable offences. He is falsely implicated in the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 to see that he is incarcerated at the pre-trial stage itself and prosecuted for the non-bailable offence before the Sessions Court.

5. The learned Public prosecutor, on instructions, submits that, as submitted by the learned counsel for the petitioner, all the offences alleged against the petitioner are bailable offences, except the offence alleged against him under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. It is also submitted that his presence is required for further investigation. The learned counsel further drew my attention to the bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

6. The learned counsel for the petitioner drew my attention to the decisions in **[2000(3) KLT 452 Shanu Vs State of Kerala]**, **[2000(2) KLT 280 Ali Vs State of Kerala]** and **[2001(1) KLT 22 Sukumari Vs State of Kerala]** and submitted that the power under Section 437 of Code of Criminal Procedure can be exercised by the Magistrate, even in cases where the offence is triable exclusively by the Court of Sessions.

7. Going by the decision in **[2000(3) KLT 452 Shanu Vs State of Kerala]**, it is seen that this Court held that the Magistrate has power to grant bail to the accused in cases under Sub-Sections(i) to (xv) of Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. In that case, the High Court directed the Magistrate to grant bail to the accused. The decision in **Shanu's case** was followed in Bail Application No.789/2005 and CrI.M.C.No.3036/2004. In **[Ali Vs State of Kerala 2000(2) KLT 280]**, this Court took the view that in the case of similar nature, there is no bar to the Magistrate to exercise the power under Section 437 of the Code of Criminal Procedure and grant bail. In **[Sukumari**

Vs. State of Kerala 2001(1) KLT 22], it was held that the power under Section 437 of Code of Criminal Procedure can be exercised by the Magistrate Court in cases where the offence is triable exclusively by the Court of Sessions. All these decisions were followed in Bail Application No.3960/2010 also.

8. Coming to the instant case, the only allegation constituting the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 is that the petitioner abused the de facto complainant by calling his caste name 'Karimpala'.

9. Considering the nature and gravity of the offence, I find that it would be just and reasonable to grant bail to the petitioner under Section 437 of the Code of Criminal Procedure. For the aforesaid reasons this Bail Application is disposed of as follows:

(i) The petitioner shall surrender before the Judicial First Class Magistrate's Court, Thaliparamba, within a period of three weeks from today and apply for bail.

(ii) If the petitioner complies with the above direction, the learned Magistrate shall grant bail to the

petitioner on such conditions as may deem fit and proper
in the facts and circumstances of the case.

sd/-
K. HARILAL,
JUDGE

R.AV

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PA to Judge