

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.KEMAL PASHA

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

Bail Appl..No.1028 of 2015

**(CRIME NO.152/2014 OF RAILWAY POLICE STATION,KOTTAYAM,
KOTTAYAM DISTRICT).**

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PETITIONERS:

- 1. RONI MATHUNNI MATHYAS,AGED 34 YEARS,
S/O.MATHEW MATHUNNI,VAZHAPPALLIL HOUSE,
THATTARAMBALAM P.O.,MAVELIKKARA.**
- 2. AJAYAKUMAR,AGED 35 YEARS,S/O.THYAGARAJAN,
JAYA BHAVANAM,PALLICKAL P.O.,MAVELIKKARA.**

**BY ADVS.SRI.S.RAJEEV
SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL**

RESPONDENT:

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,THROUGH S.I. OF POLICE,
RAILWAY POLICE STATION,KOTTAYAM.**

BY SENIOR PUBLIC PROSECUTOR SRI.C.RASHEED.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 12-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

pk

B. KEMAL PASHA, J.

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B.A. No.1028 of 2015

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Dated this the 12th day of March, 2015

ORDER

Petition under Section 438 Cr.P.C.

2. Petitioners are A1 and A2 in Crime No.1314 of 2014 of the Mavelikkara Police Station, registered for the offences punishable under Sections 447, 341, 353, 323 and 294(b) read with Section 34 of the Indian Penal Code. Presently, it seems that the offence under Section 308 IPC is also incorporated in the crime.

3. The allegation against the petitioners and the other accused is that they without having any train ticket or platform ticket, unlawfully entered in the platform of the Mavelikkara Railway Station and when the same was

questioned by the defacto complainant Gate Keeper, who was on duty, it is alleged that he was abused in filthy language and he was attacked. It is alleged that he was fisted on his chest and back and on seeing it when another Railway employee intervened, he was fisted on his nose, thereby he suffered bleeding from the nose. It is also alleged that they have abused the Superintendent of the Railway Station, who is a woman.

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

5. The learned counsel for the petitioners has argued that the petitioners are members of an organization called “Ente Mavelikkara” and they had occasion to take a photograph of a person at the Railway Station urinating in public at a vacant space at the Railway Station, as the toilet was unnecessarily kept locked by the Railway staff. It is argued that even though there was a hue and cry from the public to get the toilet open, their cries fell in deaf ears and

that was what provoked the petitioners to take such a photograph and to publish it. According to the learned counsel for the petitioners, the petitioners have been implicated in a false case, when they had approached the Superintendent of the Railway Station for submitting a memorandum.

6. The said argument forwarded by the learned counsel for the petitioners does not seem to be sound. It seems that it was at odd hours, they had reached the Railway platform. According to the learned Senior Public Prosecutor, they had reached the platform without any train ticket or platform ticket. Even though the learned counsel for the petitioners has argued out that the petitioners had reached there by a train, it is a matter that has to be proved by the petitioners. Even though the offence under Section 308 IPC is presently incorporated in the crime, I do not find any reasons at all to invite such an offence. Whatever it is, considering the seriousness of the allegations against the

petitioners, I do not think that this is fit case wherein anticipatory bail can be granted to the petitioners. It is true that no criminal antecedents have been reported against the petitioners. Considering the said aspect, I am of the view that an opportunity can be granted to the petitioners to surrender before the court below within ten days from today and seek for bail. In such case, the court below shall dispose of the case, preferably on the same day itself, provided, advance notice on such application has been given to the Assistant Public Prosecutor also. The court below shall consider the fact that the offence under Section 308 IPC cannot be invited in the crime.

With the aforesaid observation, this bail application is dismissed.

Sd/-
B.KEMAL PASHA,
JUDGE

DSV/12/3/15

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P.A. To Judge