

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.KEMAL PASHA

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

Bail Appl..No.1310 of 2015

(CRIME NO.164/2015 OF CHOTTANIKKARA POLICE STATION,ERNAKULAM).

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PETITIONERS/ACCUSED:

1. DENNY THOMAS,AGED 35 YEARS,
S/O.THOMAS,KALAPPILLIL HOUSE,
KANAYANNUR P.O.,CHOTTANIKKARA,
ERNAKULAM DISTRICT.
2. DANY THOMAS,AGED 34 YEARS,
S/O.THOMAS,KALAPPILLIL HOUSE,
KANAYANNUR P.O.,CHOTTANIKKARA,
ERNAKULAM DISTRICT.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY

RESPONDENTS/STATE:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM - 682 031,
(CRIME NO.164/2015 OF CHOTTANIKKARA POLICE STATION,
ERNAKULAM DISTRICT).
2. STATION HOUSE OFFICER,
CHOTTANIKKARA POLICE STATION,
ERNAKULAM DISTRICT - 682 312,
(CRIME NO.164/2015 OF CHOTTANIKKARA POLICE STATION,
ERNAKULAM DISTRICT).

BY PUBLIC PROSECUTOR SRI.SREEJITH.V.S.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 13-03-2015, ALONG WITH BA NO.1316/2015 THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:

B.KEMAL PASHA, J.

B.A. Nos.1310 and 1316 of 2015

Dated this the 13th day of March 2015

ORDER

Petitions under Section 438 Cr.P.C.

2. Petitioners in both the above petitions are accused Nos.1 and 2 in crime Nos.164/2015 and 165/2015 of Chottanikkara Police Station.

3. The allegation against the petitioners is that on 22.2.2015 at 2.30 p.m., they wrongfully restrained the *defacto complainant* and the first petitioner beat the *defacto complainant* with a wooden reaper aimed at his head. When he tilted his head, he sustained an injury above his left eye-brow. A2 fisted the *defacto complainant*. It is for the said incident, Crime No.164/2015 has been registered.

4. It is alleged that when the police party, under the

leadership of the *defacto complainant* in Crime No.165/2015, went to the house of petitioners for arresting the petitioners, they attacked the police party by obstructing the discharge of their official duties, and they destroyed and removed a beading of the door of the police jeep, thereby causing a wrongful loss of ₹1,000/- to the Government.

5. Crime No.164/2015 has been registered for the offences punishable under Sections 294(b), 308, 323, 324, 341 and 506(i) of the I.P.C. read with Section 34 of the I.P. C. Crime No.165/2015 has been registered for the offences 341, 332, 143, 144, 225(b) and 294(b) read with Section 149 of the I.P.C. and Section 3 of PDPP Act 1984.

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

7. The learned counsel for the petitioners has pointed out that when the petitioners were riding on a motor bike, the *defacto*

complainant in Crime No.164/2015 was also riding on another motor bike. When both the bikes reached at a road junction, the motor bike being ridden by the petitioners, slightly hit on the side of the motor bike being ridden by the *defacto complainant*, accidentally, which resulted in a wordy altercation. The *defacto complainant* in Crime No.164/2015 intimidated the petitioners by threatening that he is a close relative of the DYSP and he would teach them a lesson, and then the parties went away. As and when the petitioners reached the house, they could see the presence of police party there. Even prior to the petitioners' reaching there, the police party committed trespass into the house of the petitioners, and beat the women in the house, including the mother, wife and two year old daughter of the second petitioner. When they attempted to take away the petitioners, the local residents obstructed the high-handed acts of the police and there was a protest and finally, the police had to go away from there. A

complaint was filed before the higher authorities of the police, and consequently the concerned Sub Inspector of Police, Chottanikkara was transferred from that station immediately. Considering the facts and circumstances of this case and the facts pointed out by the learned counsel for the petitioners, much discussion is not required to conclude that these are fit cases wherein anticipatory bail can be granted to the petitioners. The contents of the CD, as well as the documents produced by the petitioners, clearly reveal the unnecessary police harassment at the instance of one of the relatives of the *defacto complainant* in Crime No.164/2015, who is in police service.

8. In the result, these bail applications are allowed, and the investigating officer or such other police officer, who is conducting the arrest of the petitioners 1 and 2 in both the petitions, is directed to enlarge the petitioners 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) These petitioners need only appear before the court below as and when they get summons or prior to that.

(ii) These petitioners shall not tamper with the evidence or influence witnesses.

(iii) These petitioners shall make themselves available for interrogation as and when required by the investigating officer.

(iv) These petitioners 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.

**Sd/
B.KEMAL PASHA,
JUDGE**

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PA to Judge