

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

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

Bail Appl..No. 1638 of 2015 ()

CRIME NO. 270/2015 OF VENGARA POLICE STATION , MALAPPURAM

PETITIONER(S)/ACCUSED :

1. SHAMSU, AGED 37 YEARS,
S/O. RAYEENKUTTY, PALAMADATHIL ERANIPURATH, E K PADI,
KANNAMANGALAM, VENGARA, MALAPPURAM DISTRICT.
2. RAFI, AGED 30 YEARS,
S/O. RAYEENKUTTY, PALAMADATHIL ERANIPURATH, E K PADI
KANNAMANGALAM, VENGARA, MALAPPURAM DISTRICT- 676 505.

BY ADV. SMT.CHITHRA R.SHENOY

RESPONDENT(S)/COMPLAINANT :

1. STATE OF KERALA,
REPRESENTED BY ITS DIRECTOR OF PUBLIC PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.
2. THE SUB INSPECTOR OF POLICE,
VENGARA POLICE STATION, MALAPPURAM DISTRICT - 676 505.

BY SRI.N.SURESH, PUBLIC PROSECUTOR

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

AMV

B.SUDHEENDRA KUMAR, J.

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B.A.No. 1638 of 2015 D
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Dated this the 26th day of June, 2015

ORDER

The petitioners are accused Nos.1 and 2 in Crime No.270 of 2015 of Vengara Police Station registered under Sections 341 and 324 read with Section 34 of the Indian Penal Code and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short, 'the Act'].

2. The prosecution allegation is that on 18.02.2015 at 3 p.m., the petitioners 1 and 2 attacked the de facto complainant with a stick causing injuries on him. It is alleged that the de facto complainant belongs to Schedule Caste/Scheduled Tribe community. It is further alleged that the petitioners abused the de facto complainant using caste name.

3. The petitioners have filed this application under Section 438 of the Code of Criminal Procedure.

4. Heard.

5. The learned Public Prosecutor has not opposed the application.

6. The learned Public Prosecutor has submitted that as per the report of the Tahsildar, the de facto complainant originally belonged to Scheduled Caste/Scheduled Tribe Community. However, the de facto complainant got himself converted into Muslim community. Since the de facto complainant is presently a member of the Muslim community, it appears that the de facto complainant presently does not belong to the Scheduled Caste/Scheduled Tribe Community. If that be so, no offence under the Act is attracted in this case.

7. In the said circumstances, the jurisdictional Magistrate will release the petitioners on bail on their surrender, particularly, when all other offences alleged against the petitioners are bailable offences. For the said reason, I am not inclined to allow this application.

8. In the result, this application stands dismissed. However, the petitioners shall be at liberty to surrender before the jurisdictional Magistrate within two weeks from today. If

the petitioners file any application for bail before the jurisdictional Magistrate on their surrender before the learned Magistrate, the learned Magistrate shall dispose of the said application in the light of the observations made in this order, on the date of surrender itself.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

AMV/29/06/

/TRUE COPY/

P.A.TO JUDGE