

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

Bail Appl..No. 1833 of 2015 ()

CRIME NO. 135/2015 OF VELLARIKUNDU POLICE STATION, KASARAGOD DISTRICT

PETITIONERS/ACCUSED NOS. 1 TO 5 :

- 1. SHAMSU @ SHAMSHUDEEN T.M., AGED 25 YEARS
DRIVER, S/O. ABDUL AZIS, THELAYILATH HOUSE
KALLAMCHIRA, P.O. BEKAL, KASARAGOD DISTRICT.**
- 2. SHEHIR @ SEHEER P., AGED 20 YEARS
PAINTER, S/O. ABDULLA, PUZHAKKARA HOUSE
KALLAMCHIRA, P.O. BEKAL, KASARAGOD DISTRICT.**
- 3. JAFFAR T.M., AGED 24 YEARS
SALES MAN AT MOBILE SHOP, S/O. ABDUL KHADER P.K.
THALAYILLATH MANZIL, KALLAMCHIRA, P.O. BEKAL
KASARAGOD DISTRICT.**
- 4. SHAHAL HAMEED L.K., 23 YEARS
SUPPLIER AT HOTEL, S/O. KUNHAMMED, LAJNAKILLATH HOUSE
KALLAMCHIRA, P.O.BEKAL, KASARAGOD DISTRICT.**
- 5. MUHAMMAD AZHAR P.@ AZARUDDEEN, AGED 20 YEARS
STUDENT ITI, S/O. BHASHEER PUCHAKKUNNU HOUSE
KALLAMCHIRA, P.O. BEKKAL, KASARAGOD DISTRICT.**

BY ADV. SRI.K.P.HARISH

RESPONDENTS/STATE OF KERALA & COMPLAINANT :

- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. THE STATION HOUSE OFFICER
(CRIME NO. 135 OF 2015 OF VELLARIKKUNDU POLICE STATION)
KASARAGOD DISTRICT-671 121.**

R1 & R2 BY PUBLIC PROSECUTOR SMT. LALIZA T.Y.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07-04-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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B.KEMAL PASHA, J.

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B.A. No. 1833 of 2015

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Dated this the 7th day of April, 2015

ORDER

Petition under Section 438 Cr.P.C.

2. According to the petitioners, they are apprehending arrest in connection with Crime No.135/2015 of the Vellarikundu Police Station, Kasaragod District, registered for the offences punishable under Sections 323 and 326 read with Section 34 IPC.

3. The learned Public Prosecutor has pointed out that petitioners 2, 4 and 5 had been removed from the array of the accused and presently, they are not accused in the crime. Matters being so, there need not be any apprehension of arrest on the part of petitioners 2, 4 and 5.

4. The allegation against petitioners 1 and 3 is that they have attacked the de facto complainant on 14.3.2015 at 9.30 p.m.

It is alleged that the 1st petitioner beat the de facto complainant with an iron rod, thereby causing the fracture of his radius and the 3rd petitioner slapped the de facto complainant.

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

6. A counter case has also been registered in the matter as Crime No.136/2015 of the very same Police Station for the offences punishable under Sections 143, 147, 148, 323, 324 and 341 read with Section 149 IPC.

7. The contents of C.D *prima facie* reveal the complicity of the petitioners. The allegations against the 1st petitioner are very grave and serious. Considering the seriousness of the allegations against the 1st petitioner, I am of the view that he is not entitled to the discretionary relief of anticipatory bail. At the same time, the allegations against the 3rd petitioner are very trivial. Considering the said aspect, I am of the view that anticipatory bail can be

granted to the 3rd petitioner.

8. In the result, this bail application is allowed in part and the investigating officer or such other police officer, who is conducting the arrest of the petitioners, is directed to enlarge the 3rd petitioner on bail in the event of his arrest on his 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) The 3rd petitioner shall report before the investigating officer in between 9 a.m. and 11 a.m. on all Tuesdays and Fridays, commencing from 14.4.2015 for a period of three months or till the filing of the final report in this case, whichever is earlier.

(ii) The 3rd petitioner shall not tamper with the evidence or influence witnesses.

(iii) The 3rd petitioner shall make himself available for interrogation as and when required by the

investigating officer.

(iv) The 3rd petitioner 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.

9. The Bail Application, as far as the petitioners 1, 2, 4, and 5 are concerned, stands dismissed. At the same time, no criminal antecedents have been reported against the 1st petitioner. Considering the said aspect, I am of the view that an opportunity can be granted to the 1st petitioner to surrender before the investigating officer in order to co-operate with the investigation.

If so advised, the 1st petitioner may surrender before the investigating officer within ten days from today and in such case, the investigating officer can interrogate the 1st petitioner, effect recovery if any, and conduct the investigation and produce the 1st petitioner without delay before the concerned Judicial First Class Magistrate's Court, where the 1st petitioner can move for bail. In

such case, the learned Magistrate shall pass appropriate orders, preferably on the same day itself, provided advance notice on such application has been given to the Assistant Public Prosecutor also.

Sd/

B.KEMAL PASHA, JUDGE

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PA to Judge