

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

Bail Appl..No. 2213 of 2015 ()

CRIME NO. 1015/2013 OF POONTHURA POLICE STATION, THIRUVANANDAPURAM

PETITIONER/3RD ACCUSED :

**ABU SUFIYAN, AGED 25 YEARS,
S/O. LATE SHAHUL HAMEED, TC 45/600(2), SUFIYA MANZIL,
MANIKYAVILAKOM MUTTATHARA VILLAGE, POONTHURA P.O.,
THIRUVANANTHAPURAM.**

BY ADV. SRI.AYYAPPAN SANKAR

RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. SUB INSPECTOR OF POLICE
POONTHURA POLICE STATION,
THIRUVANANTHAPURAM-695 281.**

BY PUBLIC PROSECUTOR SRI. JOBY JOSEPH

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 22-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

K.RAMAKRISHNAN, J.

Bail.Appln.No.2213 of 2015

Dated this the 22nd day of July, 2015

ORDER

This is an application for anticipatory bail filed by the third accused in Crime No.1015/2013 of Poonthura Police Station, Thiruvananthapuram, under Section 438 of the Code of Criminal Procedure (hereinafter called the 'Code'), 1973.

2. The case of the prosecution in nutshell was that on 17.10.2013 at about 9.30 P.M. the accused persons, on account of their previous enmity with the brother of the defacto complainant, attacked the brother with sword and chopper, with an intention to kill him and thereby, they have committed the offence punishable under Sections 324 and 307 read with 34 Indian Penal Code.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor and perused the Case Diary file.

4. The learned counsel for the petitioner submitted that the petitioner has not been arrayed as an accused in the First Information Report and he was not aware of his inclusion in the crime. So that was the reason why he could not surrender.

5. The application was opposed by the learned Public Prosecutor.

6. It is seen from the records that the crime was registered on the basis of the statement given by the brother of the injured, against three named persons, alleging commission of the offences punishable under Sections 324 and 307 read with 34 Indian Penal Code and during investigation it was revealed that the present petitioner also involved in the crime and so he has been implicated as the third accused. The petition for anticipatory bail filed by the petitioner was dismissed by the Sessions Court, as per the order in CrI.M.C.No.721/2015. The petitioner has been implicated in the case, even in the year 2013 itself. He was not appeared either before the court or before the

investigating officer. So, since he is absconding accused, it is not proper for this Court to invoke the power under Section 438 the Code to grant anticipatory bail. He can very well surrender before the concerned Magistrate court and move for a regular bail. If the petitioner surrenders before the court below, then the Magistrate Court is at liberty to consider and dispose of the bail application after hearing the Assistant Public Prosecutor of that court, strictly in accordance with law, as far as possible on the date of filing the application itself.

With the above direction and observation, the application is dismissed.

Sd/-
K.RAMAKRISHNAN
JUDGE

VS