

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

**FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937**

**Bail Appl..No. 2369 of 2015**  
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**CRIME NO. 228/2015 OF RAMAMANGALM POLICE STATION , ERNAKULAM**  
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**PETITIONER(S)/ACCUSED NOS.1&2:**  
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1. REJI. P.R., AGED 45 YEARS,  
S/O.RAJAPPAN, NANTHOONIKKUZHIYIL HOUSE,  
PAMPAKKUDA P.O., MEMMURY VILLAGE, ERNAKULAM DISTRICT.
2. SHIBY.PRAJAN, AGED 43 YEARS,  
S/O.RAJAN, PALAKOTTIL HOUSE, ANJALPETTY P.O.  
ONAKKOOR KARA, ERNAKULAM DISTRICT.

**BY ADV. SRI.IEANS.C.CHAMAKKALA**

**RESPONDENT(S)/COMPLAINANT:**  
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1. THE DEPUTY SUPERINTENDENT OF POLICE,  
MUVATTUPUZHA, THROUGH THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM-682031.
2. STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM-682031.

**BY PUBLIC PROSECUTOR SMT.REMA. R.**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03-07-2015,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**PJ**

**MARY JOSEPH, J.**

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**B.A. No.2369 of 2015**  
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**Dated this the 3<sup>rd</sup> day of July 2015**

**O R D E R**

Application for bail filed under Sec.438 of the Code of Criminal Procedure.

2. Petitioners are accused nos.1 and 2 in Crime No.228 of 2015 of Ramamangalam Police station registered for the offences punishable under Secs.323, 324, 427, 342 and 294(b) read with Sec.34 of the Indian Penal Code and Secs.(1)(X) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. The allegation was that on 20.03.2015 at 1.30 p.m., the petitioners who belong to Ezhava community wrongfully confined him in a room in building No.V/486 of Pampakkuda Panchayath wherein Toddy Shop bearing No.TS.20 is functioning, assaulted him and abused him by calling his caste name. It is further alleged that the

petitioners have also destroyed the spectacles of the defacto complainant by throwing it away after snatching the same from his face. On the basis of the aforesaid allegations, the case was registered. The petitioners apprehend that they will be arrested in the matter by the respondents and this application is filed seeking anticipatory bail.

3. Sri. Ieans C. Chamakkala, the learned counsel appearing for the petitioners and Sri. R. Rema, the learned Public Prosecutor appearing for the respondents were heard. The case diary as well as the report furnished, have been perused.

4. It is submitted by the learned counsel for the petitioners that all the offences alleged against the petitioners except the one under Sec.3(1)(X) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 are bailable ones. Placing reliance upon the dictum in **Shanu Vs. State of Kerala [2000 KHC 651]**, he canvassed for enlargement of the

petitioner on bail.

5. Learned Public Prosecutor has drawn my attention to Sec.18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act and urged that in view of the provision, this court is refrained from exercising the jurisdiction under Sec.438 of the Code of Criminal Procedure.

6. A perusal of the Case Diary would reveal that the offence under Sec.324 of the Indian Penal Code incorporated initially in the First Information Report was deleted on account of lack of evidence to support that. It is true that there is a clear bar under Sec.18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act for this court to exercise the discretionary power envisaged under Sec.438 Cr.P.C. in respect of offences coming under the various provisions of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. I have gone through the case diary, as well as the report of the respondents and found that

prima facie the materials available support the allegations. In the said circumstances, the rigor of Sec.18 will come into play in the matter also. In view thereof, I am declined to grant the relief sought for by the petitioners. At this juncture, the learned counsel for the petitioners canvassed for a direction to the petitioners to surrender before the Investigating Officer.

7. In the result, this bail application is disposed of with a direction to the petitioners to surrender before the first respondent at 11 a.m. on 10.7.2015 for interrogation and if interrogation is not completed on that day the petitioners are directed to appear before the Investigating Officer on the day and time as directed by the latter. After the interrogation, the petitioners shall be produced before the learned Magistrate having jurisdiction on the same day. The learned Magistrate shall consider the bail application if any moved by the petitioners and the application if any filed by the Investigating Officer for getting the petitioners in custody

if custodial interrogation is found necessary during the questioning without delay in accordance with law in view of the dictum laid down by this court in **Shanu Vs. State of Kerala [2000 KHC 651]**.

Sd/-  
**MARY JOSEPH**  
**JUDGE**

/ True Copy /

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P.A. To Judge