

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

Bail Appl..No. 3178 of 2015 ()

CRIME NO. 334/2014 OF NEMOM POLICE STATION, THIRUVANANTHAPURAM DIST.

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PETITIONER/ACCUSED:

**BIJU, AGED 34 YEARS,
S/O.RAJAPPAN, KANNADIKUZHI VEEDU,
EDAKKODE P.O., PALLICHAL VILLAGE,
THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.RAJESH P.NAIR.

RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

BY PUBLIC PROSECUTOR SMT.MADHUBEN.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 18-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

RAJA VIJAYARAGHAVAN.V. J

B.A. 3178 of 2015

Dated 18th June, 2015

ORDER

1. This is an application for anticipatory bail preferred by the petitioner who is the sole accused in crime No.334 of 2014 of the Nemom police station. The said crime is registered under Section 308 of the IPC.

2. The gist of the allegation is that on 3.3.2014 at about 3.00 pm the petitioner who is a coconut climber by profession, after plucking coconuts from the property of the complainant, demanded a sum of Rs.10,000/- from him . He is alleged to have threatened that if the amount was not paid, he would not be permitted to reside peacefully in his house. When the defacto complainant did not accede to the demand, the petitioner is alleged to have taken out his chopper and inflicted an injury on the head of the defacto complainant. The defacto complainant evaded, when the accused attempted to

strike another blow, and thus saved himself from more fatal injuries.

3. I have heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. The learned counsel for the petitioner has submitted that the allegation in the first information statement has no ring of truth. It was submitted that the complainant has grossly embellished his version to make the incident appear more grave. According to him, the petitioner had only demanded the wages from the defacto complainant but when he refused to pay the same, there arose a wordy altercation between the defacto complainant and the petitioner. This escalated to a fight between the two and both of them sustained injuries. The injuries sustained by the defacto complainant was during a fall, is the contention of the counsel for the petitioner. It was submitted that the petitioner has also sustained injuries in the same incident. It was finally contented that the

offense under S 308 is not attracted on facts and the mere fact of incorporation of S 308 would reveal that it was for subjecting the petitioner to unwarranted detention.

5. On the other hand, the learned Public Prosecutor has submitted that the defacto complainant has sustained an injury on his head and this is not a case where the petitioner can be armed with the discretionary relief of pre-arrest bail.

6. It is seen from the FIR produced that the crime was registered as early as on 3.3.2014 and as evident from the scene mahazar produced along with the application, the recovery of the chopper used for the commission of the offense has been effected from the property of the defacto complainant.

7. In view of the fact that the recovery has been effected over the weapon and taking note of the facts and

circumstances especially the fact that the incident had taken place more than an year back this Court is of the considered view that the custodial interrogation of the petitioner is not warranted in the instant case and the application can be allowed subject to stringent conditions:-

1. The petitioner, in the event of arrest, shall be released on bail on his executing a bond for Rs.35000/- (Thirty Five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate concerned.
2. He shall surrender his passport before the learned Magistrate and in case he is not holding any passport, he shall file an affidavit stating so, within five days of his release.
3. He shall not leave India without the previous permission of the jurisdictional court.
4. The petitioner shall cooperate with the investigation and shall appear before the investigating officer between 10 a.m and 11 a.m on every Wednesday for 3 months, or till the final report is filed, whichever is earlier.

5. He shall not threaten or attempt to influence the witnesses and shall not get involved in any criminal case while on bail .

6. He shall in no event tamper or attempt to tamper with the evidence nor shall he hamper the investigation.

Violation of any of the above conditions will entitle the jurisdictional Court to cancel the bail in accordance with the law.

In the result, this application is allowed.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

//True Copy//

P.S.ToJudge