

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. 3751 of 2015

CRIME NO. 233/2015 OF AYIROOR POLICE STATION , THIRUVANANTHAPURAM

PETITIONER(S)/A-2 & A-4 :

- 1. SAJIDH P, AGED 33 YEARS,
S/O.POOKUNJU, CHIRAYITHUDI VEEDU, MANTHARA,
IDAVA, THIRUVANANTHAPURAM.**
- 2. ABU, AGED 18 YEARS,
S/O.SHAJI, CHIRAYTHUDI VEEDU, MANTHARA,
IDAVA, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.SUMAN CHAKRAVARTHY
SMT.BREJITHA UNNIKRISHNAN**

RESPONDENT(S) :

**THE STATE OF KERALA,
REP. BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA-682 031.**

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:**

Msd.

K.RAMAKRISHNAN, J.

Bail.Appln.No.3751 of 2015

Dated this the 22nd day of July, 2015

ORDER

This is an application for anticipatory bail, filed by the accused numbers 2 and 4 in Crime No.233/2015 of Ayiroor Police station, Thiruvananthapuram district, 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 27.03.2015 at about 1 p.m., the accused persons have formed themselves into an unlawful assembly, on account of their previous enmity with the defacto complainant, who is the Managing Director of the school by name 'Little Flower English Medium School', Edava and with a common object of committing culpable homicide attacked the defacto complainant, who was watching the fireworks conducted in connection with the festival of the Chirayil Bhagavathi Temple festival and caused injuries to him with deadly weapons and took away his gold chain

worth Rs.80,000/- and also a mobile phone worth Rs.40,000/- and caused damage to the school gate, causing loss of Rs.15,000/- and thereby all of them committed the offences punishable under Sections 143, 147, 148, 294(b), 447, 323, 324, 506(ii), 395, 308, 427 read with 149 of 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 petitioners submitted that the petitioners have not committed any offences and they are innocent for the same and they have been falsely implicated in the case. They have no criminal background and they have prayed for allowing the application.

5. The learned Public Prosecutor opposed the same on the ground that the investigation is not over and none of the accused were arrested so far.

6. It is seen from the records that the above crime was registered against two named persons Kutty,

Sajidh, Shaji, who is an autorikshaw driver, his son and other 16 identifiable persons, on the basis of the statement given by the defacto complainant alleging offences under Sections 143, 147, 148, 149, 294(b), 447, 323, 324, 506(ii), 395, 308, 427 read with 34 of Indian Penal Code. It is seen from the records that during investigation, it was revealed that the present petitioners have involved in the crime. Apart from them, two other persons were also involved and during investigation, it was revealed that except four accused persons including the petitioners, no others involved and so they filed a report to delete Sections 143, 147, 148, 149 and 395 of Indian Penal Code and to add Section 394 read with 34 Indian Penal Code. It is also mentioned in the report of the investigating officer that during investigation, if it was revealed that any other persons other than the accused now shown have involved, they will be implicated later. None of the accused persons were arrested so far. The presence of the petitioners may be required for proper investigation and also to find out the persons involved and

also to recover the articles alleged to have been robbed. Further the anticipatory bail application filed by the first accused was dismissed by this Court as per order in Bail Application No.2435/2015. Considering the gravity of the offence and also the stage of the investigation, this Court feel that it is not a fit case to grant anticipatory bail to the petitioners invoking the extra ordinary power under Section 438 of the Code. But they can very well surrender before the concerned Magistrate court and move for a regular bail. If they surrender before the court below and move for regular bail, then the learned Magistrate is directed 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 directions and observations, the application is dismissed.

Sd/-
K.RAMAKRISHNAN
JUDGE

VS