

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

Bail Appl..No. 4015 of 2015 ()

**CRIME NO. 529/2015 OF VILAPPILSALA POLICE STATION,
THIRUVANANDAPURAM DISTRICT**

PETITIONER/ACCUSED :

**BIJU PHILIP, S/O.TITUS, AGED 30 YEARS,
MARATHAKIDI, THADATHARIKATHU VEEDU, URINYAKKODU POST,
VELLANADU, KATTAKKADA, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.A.RAJASIMHAN
SRI.K.NIRMALAN**

RESPONDENT/STATE :

**STATE OF KERALA
THROUGH THE SUB INSPECTOR OF POLICE,
VILAPPILSALA POLICE STATION, THIRUVANANTHAPURAM
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT. R. REMA

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 27-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

SUNIL THOMAS, J.

B.A. No.4015 OF 2015

Dated this the 27th day of July, 2015

O R D E R

The sole accused in Crime No.529/2015 of Vilappilsala Police Station, Thiruvananthapuram, for alleged offences punishable under Sections 294(b), 324, 326 and 452 of IPC. is the petitioner herein.

2. The allegation of the prosecution is that on 11/5/2015 at about 8.30. p.m., the accused trespassed into the house of the de facto complainant armed with chopper, abused him and attempted to attack him. The defacto complainant suddenly moved to one side and it is alleged that the back portion of the chopper hit on the nose of the de facto complainant. He was rushed to the hospital and was given treatment. On the basis of the complaint lodged, crime was registered and the police is investigating. The accused apprehends arrest and hence, this application for pre-arrest bail.

3. Heard the learned counsel for the petitioner and the learned public prosecutor. Examined the records.

4. The learned counsel for the petitioner vehemently contended that the entire allegations of the defacto complainant are false and that, in fact, the petitioner was attacked by the de facto complainant and few other persons on 11/5/2015. To support his contention, the

learned counsel pressed into service Annexure A1, which is the out patient record issued by the General Hospital, Thiruvananthapuram. It shows that on 11/5/2015 at 10.26 p.m. the accused was seen by the doctor . The history was alleged assault by 4-5 persons near his house at 7.30 p.m.. He complained of pain and the doctor has noted abrasion and contusion over the back. There was injury on the left forehead. According to the petitioner, in spite of his complaint, no action was taken. Annexure A2 complaint was laid to the District Police Chief, which is acknowledged by Annexure A3 receipt. Evidently, there are some materials to show that he had also sustained injury on that date.

5. On the other hand, the case of the prosecution is that the accused had caused serious injury on the body of the de facto complaint. He was admitted in Kattakkada hospital and the FIS was reported there from. The body note indicates that he had injury near face. It appears that thereafter his 'X' ray was taken and the discharge summary of the Medical College Hospital dated 18/6/2015 shows that he had nasal bone fracture and procedure was done under local anesthesia. He was admitted from 16/6/2015 to 18/6/2015.

6. The learned counsel for the petitioner contended that it is

unbelievable that the person who trespassed into the house armed with a chopper, caused injury with the back side of the weapon. Probably, the contention of the learned counsel for the petitioner is not completely without any basis. However, according to the de facto complainant, he sustained injury only when he tried to escape from the attack. However, this is a question of fact to be established in evidence. Notwithstanding the above, the fact remains that the de facto complainant has sustained a fracture of the nasal bone. Comparing this with the injury caused to the accused, it appears that not only that defacto complainant had sustained fracture of the nasal bone, but it is more on a vital part of the body. Weapon is yet to be recovered.

7. Evaluating the entire circumstances, I feel that if the accused is granted bail at this stage of investigation, there is a possibility of it hampering the investigation. Hence, I am not inclined to grant bail to the petitioner at this stage. Hence, bail application is dismissed.

8. At this juncture, the learned counsel for the accused submitted that the accused may be given permission to surrender before the investigating officer or before the jurisdictional Magistrate. He may do so if advised. However it is made clear that in the event of

he being arrested and produced before the jurisdictional Magistrate, any bail application, if filed by him, may preferably be heard on the same day, untrammelled by any of the observations made above.

With the above observations, this application is dismissed.

Sd/-

SUNIL THOMAS

Judge

dpk

/true copy/ PS to Judge

