

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

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.HARIPRASAD**

**MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937**

**Bail Appl..No. 5921 of 2015**  
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**CRIME NO. 1136/2009 OF KUNNAMKULAM POLICE STATION, THRISSUR DISTRICT.**  
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**PETITIONER/ACCUSED:**  
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**RAFI @ MOHAMMED RAFI, AGED 29 YEARS,  
S/O THAZHATHUTHETIL MOHAMMED BASHEER,  
KARIKKAD DESOM AND VILLAGE,  
TALAPPILLY TALUK, THRISSUR DISTRICT.**

**BY ADV. SRI.SUNNY MATHEW**

**RESPONDENTS/COMPLAINANTS:**  
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- 1. SUB INSPECTOR OF POLICE,  
KUNNAMKULAM, THRISSUR DISTRICT - 680 001.**
- 2. THE INSPECTOR OF POLICE,  
KUNNAMKULAM, THRISSUR DISTRICT - 680 001.**
- 3. STATE OF KERALA(RERSPONDENTS 1, 2 & 3)  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM,  
COCHIN-682031.**

**BY SENIOR PUBLIC PROSECUTOR SRI.C.RASHEED**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION  
ON 12-10-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:**

**mbr/**

**A.HARIPRASAD, J.**

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**B.A.No.5921 of 2015**  
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Dated this the 12<sup>th</sup> day of October, 2015

**O R D E R**

Application filed under Section 438 of the Code of Criminal Procedure.

2. Petitioner seeks pre-arrest bail in Crime No.1136 of 2009 of Kunnampulam Police Station which is now pending in S.C.No.785 of 2012 of III Additional Sessions Court, Thrissur. He is involved in offences punishable under Sections 143, 147, 148, 341, 324, 326, 120(B) and 302 r/w Section 149 of the Indian Penal Code.

3. Prosecution case is that on 23.10.2009 at about 09.50 p.m., the accused persons formed themselves into an unlawful assembly with the common object of killing their political rival and after hatching a conspiracy he was attacked with swords and other lethal weapons causing injuries. Petitioner is the first accused in the crime.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

5. Leaned Public Prosecutor opposed the bail application. It is submitted that he was released on bail

during the crime stage. Later, he absconded from the court and now warrant is pending against him.

6. Leaned counsel for the petitioner submitted that as he secured an employment abroad, he could not appear before the court. Whatever be the reason, I am of the definite view that jurisdiction vested in this court under Section 438 of the Cr.P.C. shall not be used in favour of an accused who absconded from court as the purpose of enacting Section 438 of the Cr.P.C is only to avoid custodial interrogation at the first instance. Leaned counsel for the petitioner submitted that the petitioner's marriage is fixed to a near date.

7. Considering the jurisdictional issue involved, I am not inclined to grant anticipatory bail. In the event, the petitioner surrenders before the court, the court will consider the matter on merit and pass appropriate orders.

With this observations, the bail application is dismissed.

Sd/-  
**A.HARIPRASAD, JUDGE.**

AS

/True Copy/

P.A. to Judge