

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

Bail Appl..No. 6982 of 2015 ()

CRIME NO. 1035/2015 OF ADIMALI POLICE STATION , IDUKKI DISTRICT

PETITIONER/ACCUSED :

**SHIAZ, AGED 34 YEARS,
S/O.ASHRAF MAMMU, KURIAPPARAMBIL HOUSE,
KUDAPUZHA, CHALAKKUDY, THRISSUR.**

**BY SRI.K.GOPALAKRISHNA KURUP,SENIOR ADVOCATE
ADV. SRI.ABHISHEK KURIAN**

RESPONDENT(S) & STATE :

- 1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM -682 031
CRIME NO. 1035/2015 OF ADIMALI POLICE STATION,
IDUKKI DISTRICT.**
- 2. STATION HOUSE OFFICER,
ADIMALI POLICE STATION, IDUKKI DISTRICT-685 561
(CRIME NO. 1035/2015 OF ADIMALI POLICE STATION,
IDUKKI DISTRICT).**

***ADDL.R3 IMPEADED**

***ADDL.R3: JESY, W/O. SETHU MANGATTU, AGED 40 YEARS,
MANGATTU HOUSE, ADIMALI.P.O., IDUKKI DISTRICT.**

***ADDL.R3 IS IMPEADED AS PER ORDER DATED 23/12/2015 IN
CRL.M.A.NO.11031/2015.**

**R1 & R2 BY DIRECTOR GENERAL OF PROSECUTION SRI.K.I.ABDUL RASHEED
ADDL.R3 BY ADVS. SRI.S.U.NAZAR
SRI.MANSOOR.B.H.**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 17-12-2015, THE COURT ON 23-12-2015 PASSED THE FOLLOWING:**

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A.HARIPRASAD, J.

B.A. No.6982 of 2015

Dated this the 23rd day of December, 2015

ORDER

Application under Section 438 of the Code of Criminal Procedure.

2. Third accused in Crime No.1035 of 2015 of Adimali Police Station registered for offences punishable under Sections 143, 147, 148, 324, 326 and 452 read with Section 149 of the Indian Penal Code seeks pre-arrest bail.

3. Prosecution levels the following allegations against the accused. Accused persons as members of an unlawful assembly armed with deadly weapons like dagger, iron rod, etc. demolished certain buildings and structures adjacent to the defacto complainant's house. The incident was on 17.10.2015 at 2.15 hours in the night. On hearing the commotion, the defacto complainant came out of his house with a mobile phone. The accused persons masked their faces and they vandalised the entire structures. On seeing the defacto complainant, accused 1 to 3 threatened him, throttled him and demanded his phone. When the defacto complainant refused to part with his phone, the fourth accused inflicted a blow on the shoulder of the defacto complainant and thereby caused a fracture. The defacto complainant hurriedly returned to his house. The

accused chased him and they attacked even wife of the defacto complainant. Therefore, the accused persons have committed the offences.

4. Heard the learned Senior Counsel for the petitioner and the learned Additional Director General of Prosecution.

5. The investigating officer recorded statement of the defacto complainant on 17.10.2015 at 9 O' clock in the morning. Investigation is gradually progressing.

6. Learned Senior Counsel for the petitioner submitted that case of the prosecution is feeble. Going by the allegations in the first information statement, it can be seen that the petitioner was not identified at the time of incident. It is true that the incident took place in pitch darkness. The defacto complainant had stated that his neighbour Sakeer had created mortgage in respect of the neighbouring premises and availed loan from someone. It is also averred in the first information statement that there were disputes between Sakeer and the financier in respect of that land. It is the case of the defacto complainant that the accused terrorised the persons in the locality including the defacto complainant. They drove away workers in a hotel put up in the first floor of a building. They created pandemonium and in the melee, many persons sustained injuries. Learned Senior Counsel disputed the involvement of the petitioner in the incident. According to him, Brucy Perera is the owner of the neighbouring property.

Sakeer (defacto complainant in Crime No.1035 of 2015 of Adimali Police Station) has no right over the premises. Petitioner is only power of attorney holder of said Brucy Perera. He has no connection with the alleged incident.

7. After hearing the learned counsel on both sides and on perusing the materials in the case diary, I am of the view that the petitioner is not entitled to get a blanket order of anticipatory bail. Interrogation of the petitioner will be necessary to unmask the identity of the assailants. Hence the following directions:

Petitioner shall surrender before the investigating officer within a period of two weeks from today and after questioning him the officer concerned shall produce him before the court on the same day. In that event the petitioner is free to move for regular bail and the learned Magistrate shall consider the application on merits and pass appropriate orders as expeditiously as possible. If petitioner does not surrender before the investigating officer within the said time, the investigating officer is free to arrest him, as if no order is passed in this case by this Court.

Application is disposed of.

A. HARIPRASAD, JUDGE.

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