

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

Bail Appl..No. 7206 of 2015 ()

CRIME NO. 592/2006 OF MUVATTUPUZHA POLICE STATION, ERNAKULAM DISTRICT

PETITIONER/3RD ACCUSED:

**BAVA, AGED 35 YEARS, S/O.MEERAN,
NEDIYAN HOUSE, PALLIPURAM KARA,
MARAMPILLY VILLAGE, PERUMBAVOOR,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.AMEER.K.M.
DR.PAULY MATHEW MURICKEN**

RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
REPRESENTING THE SUB INSPECTOR OF POLICE,
MUVATTUPUZHA POLICE STATION,
ERNAKULAM DISTRICT. PIN-682 031**

BY PUBLIC PROSECUTOR SMT. R.REMA

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 25-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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A.HARIPRASAD, J.

B.A. No.7206 of 2015

Dated this the 25th day of November, 2015

ORDER

Application for pre-arrest bail under Section 438 Cr.P.C.

2. Petitioner is the 3rd accused in Crime No.592 of 2006 of Muvattupuzha Police Station registered for offence punishable under Sections 323, 324 and 326 r/w Section 34 I.P.C. The matter is now pending before the J.F.C.M - I, Muvattupuzha in C.C No.6/2010. The petitioner is said to be an absconding accused in the case and therefore proceedings under Sections 82 and 83 Cr.P.C were initiated against him. Non bailable warrants have been issued repeatedly.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor. I am of considered view that the jurisdiction of this Court under Section 438 Cr.P.C is not intended to be exercised in such a situation. The legislative intent revealed from the law commission report and from the objects and reasons of the provision is clear that it is only intended to avoid any torture in

custody in unwanted cases. That cannot be exercised against the proceedings pending before a court. Therefore, I am not inclined to grant pre-arrest bail to the petitioner in this case.

4. Learned counsel for the petitioner submitted that the co-accused in the case have been tried and acquitted. He also placed reliance on the decision of this court in ***Biju v. State of Kerala (2007 (2) K.L.T 280)*** and ***Vineeth Somarajan v. State of Kerala (2009(3) K.L.T 576)***. Considering the entire facts and circumstances of the case, I do not find any reason to grant pre-arrest bail to the petitioner. Hence, following directions are issued :

The petitioner shall surrender before the Court concerned within a period of two weeks from today and thereafter the petitioner shall move for bail before the court. In that event, the application shall be considered on merits and pass appropriate orders as expeditiously as possible in the light of the above said decisions.

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

amk

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P.A to Judge