

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

Bail Appl..No. 7210 of 2015

**C.C.NO.545 OF 2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
MUVATTUPUZHA**

PETITIONER(S)/ACCUSED :

- 1. SAIDU MUHAMMED, AGED 44 YEARS,
S/O.ALIYAR, CHAKKAPPILLIL HOUSE, MULAVOOR KARA,
MULAVOOR VILLAGE, MUVATTUPUZHA TALUK.**
- 2. AMEEN, AGED 25 YEARS,
S/O.NASSAR, MANGALATH HOUSE, MULAVOOR KARA,
MULAVOOR VILLAGE, MUVATTUPUZHA.**

**BY ADVS.SRI.SIRAJ KAROLY
SRI.R.PARAMESWARA IYER**

RESPONDENT(S)/COMPLAINANT :

**STATE OF KERALA, PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM,
REPRESENTING THE SUB INSPECTOR OF POLICE,
MUVATTUPUZHA.**

BY PUBLIC PROSECUTOR SMT.R.REMA

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 24-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

A.HARIPRASAD, J.

B.A.No.7210 of 2015

Dated this the 24th day of November, 2015

ORDER

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

2. Petitioners are accused Nos.1 and 6 in C.C.No.545 of 2013 on the file of the Judicial First Class Magistrate Court, Muvattupuzha. They are involved in the offences punishable under Sections 143, 147, 447, 506(i) and 294(b) r/w Section 149 of the Indian Penal Code. They secured bail in the case earlier and later, abstained from the court.

3 Heard learned counsel for the petitioners and the learned Public Prosecutor.

4. Annexure-1 is the proceedings in the case. On 02.02.2015, the petitioners were absent and applied for excusing their absence. It was posted for recording the plea as a last chance to 08.05.2015. It is specifically mentioned by the learned Magistrate that no further time would be granted. On 08.05.2015 all accused were absent.

Their application for excusing the absence was rejected and NBW to all accused were issued. The case was adjourned to 19.08.2015. On 19.08.2015, the petitioners were absent and others were present.

5. Learned counsel for the petitioners submitted that the petitioners were out of station and they could not appear before the court. It is also submitted that there is a civil dispute between the petitioners and the defacto complainant which ultimately resulted in a decree in favour of the petitioners.

6. Learned Public Prosecutor submitted that the Magistrate has issued warrant and jurisdiction under Section 438 Cr.P.C cannot be invoked in such cases. I do agree with the submissions of the Prosecutor that the pre-arrest bail jurisdiction in Section 438 Cr.P.C shall not be invoked in such matters. However the following directions are issued:

The petitioners shall surrender before the court on 27.11.2015, the date to which the case is posted. The petitioners are

free to move for regular bail and in that event the learned Magistrate shall consider the bail application on merits, taking into account the provisions in Sub Section 2 of Section 436 Cr.P.C and also the fact that this is an offshoot of a civil case.

With the above observations, the bail application is disposed of.

Sd/-
A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. To Judge