

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

Bail Appl..No. 7524 of 2015

CRIME NO. 1079/2015 OF PAYANGADI POLICE STATION, KANNUR

PETITIONER(S)/ACCUSED NOS.1-7:

1. M.K.ISMAIL, AGED 40 YEARS,
S/O.MOIDEEN, MUTTOM, PAZHANGADI, KANNUR DIST.
2. E.V.SABEER, AGED 32 YEARS,
S/O.AZEEZ, MUTTOM, PAZHANGADI,
KANNUR DIST.
3. M.K.SIDDIQUE, AGED 41 YEARS,
S/O.MOIDEEN, MUTTOM, PAZHANGADI,
KANNUR DIST.
4. ANJILATH HARIS, AGED 48 YEARS,
S/O.KAVOOTTY, MUTTOM, PAZHANGADI,
KANNUR DIST.
5. SHUHAIBA, S/O.SIDDIQUE, AGED 43 YEARS,
MUTTOM, PAZHANGADI, KANNUR DIST.
6. S.H.RAFEEQUE,
S/O.BABU M.S., MUTTOM, PAZHANGADI, KANNUR DIST.
7. NIZAR @ BLACK NIZAR,
S/O.SALAM, MUTTOM, PAZHANGADI, KANNUR DIST.

BY ADV. SRI.C.K.SREEJITH

RESPONDENT(S)/COMPLAINANT & STATE:

1. STATION HOUSE OFFICER,
PAZHANGADI, KANNUR DIST, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682 031.
2. THE STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM 682 031.

BY PUBLIC PROSECUTOR SMT.R.REMA

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09-12-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

B.SUDHEENDRA KUMAR, J.

B.A.No.7524 of 2015

Dated this the 9th day of December, 2015

ORDER

This is an application filed under Section 438 of the Code of Criminal Procedure.

2. The petitioners are accused Nos.1 to 7 in Crime No.1079 of 2015 of Payangadi Police Station registered under Sections 143, 147, 148, 447 and 436 r/w Section 149 of the Indian Penal Code. Prosecution allegation is that on 02.11.2015 at about 02.00 a.m., the petitioners along with other accused formed themselves into an unlawful assembly, committed rioting armed with deadly weapons and demolished the window panes of the house of the defacto complainant and thereafter, trespassed into the said house and set fire the foot mat of the house causing a loss to the tune of ₹3,000/- to the defacto complainant. The petitioners were arrested on 13.11.2015 and ever since, they have been in custody.

3. Heard. Perused the case diary.

4. Learned Public Prosecutor has opposed the bail application. It appears from the case diary that the only non-bailable offence alleged against the petitioners is the offence under Section 436 of the Indian Penal Code. Having gone through the facts and circumstances as revealed from the case diary, I am of the view that the argument of the learned counsel for the petitioners, that the allegations do not constitute the offence under Section 436 IPC, cannot be said to be unfounded. It has been submitted by the learned Public Prosecutor that the petitioners are not involved in any other offence of similar nature. However, the petitioner Nos.2 and 6 have been already arrested. Therefore, the application as regards petitioner Nos.2 and 6 is liable to be dismissed. Having regard to the facts and circumstances of the case, including the fact that the petitioners are the first time offenders, I am inclined to grant the relief under Section 438 Cr.P.C in favour of petitioner Nos.1, 3 to 5 and 7.

In the result, this application stands dismissed as

regards petitioner Nos.2 and 6 and allowed as regards petitioner Nos.1, 3 to 5 and 7, and the respondent is directed to release the petitioner Nos.1, 3 to 5 and 7 on bail in the event of their arrest in connection with Crime No.1079 of 2015 of Payangadi Police Station on condition of each of petitioners executing a bond for ₹30,000/- (Rupees thirty thousand only) each with two solvent sureties each, each for the like sum to the satisfaction of the Station House Officer, Payangadi Police Station before whom the petitioners shall surrender within 10 days from today, if not arrested in the meantime, and subject to the following further conditions:

- (a) The petitioner Nos.1, 3 to 5 and 7 shall report before the Investigating Officer on every Monday between 09.00 a.m and 11.00 a.m. for a period of three months and thereafter as and when required by the Investigating Officer in writing to do so.
- (b) The petitioner Nos.1, 3 to 5 and 7 shall not

intimidate or influence the witnesses or in any way tamper with the investigation.

- (c) The petitioner Nos.1, 3 to 5 and 7 shall not get involved in any offence while on bail.

Sd/-

B.SUDHEENDRA KUMAR, JUDGE.

AS

/True Copy/

P.A. to Judge