

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

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

Bail Appl..No. 7894 of 2015 ()

CRIME NO. 874/2015 OF PANDIKKAD POLICE STATION, MALAPPURAM DISTRICT

PETITIONERS/ACCUSED :

1. LATHEEF
S/O. MOIDEENKUTTY, AGED 34 YEARS
KACHAKKARAN HOUSE, PANTHALLUR
MALAPPURAM DISTRICT.
2. MUHAMMED RIYAS
S/O. ABDUL AZEEZ, AGED 21 YEARS
MADARIMEL VEETIL, KADAMBODE,
PANTHALLUR, MALAPPURAM DISTRICT.
3. MUJEEB RAHIMAN
S/O. ABDU RAHIMAN, AGED 21 YEARS
CHAKKALAKUNNAN HOUSE
KADAMBODE, PANTHALLUR
MALAPPURAM DISTRICT.
4. ALI AKBAR
S/O. HASSAN MOYIN
AGED 31 YEARS, VATTAKANDAN HOUSE
KADAMBODE, PANTHALLUR
MALAPPURAM DISTRICT.
5. MUHAMMED
S/O. MOOSA MUSLIYAR, AGED 41 YEARS
OTTAKATH THOKKATT HOUSE
KADAMBODE, PANTHALLUR
MALAPPURAM DISTRICT.
6. MUHAMMED SHAREEF
S/O. USMAN, AGED 25 YEARS
ALUNGAL HOUSE, KADAMBODE, PANTHALLUR
MALAPPURAM DISTRICT.

7. JALEEL
S/O. ABU HAJI, AGED 29 YEARS
MATTUMMAL HOUSE, KADAMBODE, PANTHALLUR
MALAPPURAM DISTRICT.
8. NOUSHAD
S/O. MUHAMMED, AGED 29 YEARS
PAPPADAN HOUSE, KADAMBODE, PANTHALLUR
MALAPPURAM DISTRICT.
9. SUBAIR
S/O. ABDU RAHIMAN, AGED 32 YEARS
OTTAKATH HOUSE, KADAMBODE, PANTHALLUR
MALAPPURAM DISTRICT.
10. ALAVI
S/O. ABOOBACKER, AGED 26 YEARS
MADARI KARUVARATHODI HOUSE
KADAMBODE, PANTHALLUR
MALAPPURAM DISTRICT.
11. AIYANATTU SALAM
S/O. MUHAMMED, AGED 30 YEARS
THONDIYIL HOUSE, KADAMBODE, PANTHALLUR
MALAPPURAM DISTRICT.
12. SIRAJ
S/O. MUHAMMED MOULAVI
AGED 33 YEARS, CHAKKIPARAMBAN HOUSE
KADAMBODE, PANTHALLUR
MALAPPURAM DISTRICT.
13. MUJEEB RAHMAN
S/O. KHADER, AGED 36 YEARS
PILLATTIL HOUSE, KADAMBODE, PANTHALLUR
MALAPPURAM DISTRICT.
14. MUJEEB
S/O. MOYIN, AGED 35 YEARS
KAPPIKUZHI HOUSE, KADAMBODE, PANTHALLUR
MALAPPURAM DISTRICT.
15. SIDDIQUE
S/O. MUHAMMED, AGED 37 YEARS
KACHAKKARAN HOUSE, KADAMBODE, PANTHALLUR
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS/STATE & COMPLAINANT :

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1. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM, KOCHI – 682 031.
 2. THE SUB INSPECTOR OF POLICE
PANDIKKAD POLICE STATION, MALAPPURAM DISTRICT
PIN – 676 521.

R1 & R2 BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH

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

Mn

P.BHAVADASAN, J.

B.A. No. 7894 of 2015

Dated this the 23rd day of December, 2015

ORDER

The petitioners are accused in Crime No. 874/2015 of the Pandikkad Police Station for having committed offences punishable under Sections 143, 147, 148, 447, 341, 354, 323, 324, 294(b), 506(i) read with Section 149 of IPC and also under Sections 3(i)(x)& (xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

2. The learned counsel appearing for the petitioners points out that Section 3(i)(x)& (xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, even assuming there is a utterance by one or two persons, is applicable to them only and Section 149 cannot be taken aid of to attribute malice to other persons. Others are all minor offences. The counsel would also go to the extent of saying that the provision of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act has been deliberately

included so as to see that the petitioners are not released on bail. According to the petitioners, as a part of the victory in the local panchayath election, two factions took out procession and they met at a point where it was free for all. In that incident, injuries were suffered by both sides. Sri. Babu, the learned counsel for the petitioners would also point out that the first crime registered namely, Crime No.873/2015 is based on the complaint by one of the members of the factions to which the accused belong. It was a mutual fight.

3. The learned Public Prosecutor opposed the petition by pointing out that the since the offences of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act are included, going by Section 18 of the Act, this Court is precluded from granting anticipatory bail.

4. After having heard the learned counsel for the petitioners and the learned Public Prosecutor, as rightly pointed out by the learned counsel for the petitioners, first

the utterances which attract the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act in the circumstances can be attributed only to those persons who are responsible for making such utterances and Section 149 can be hardly taken aid of to mulct liability on others with regard to that aspect in the case.

5. It is pointed out by the learned Public Prosecutor that the allegations attracting the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act are attributed to A2, A6 and A9 in the crime. It is to be noticed here that A9 is not a party to the petition. The second accused in the crime is the second petitioner and 6th accused is the 15th petitioner. Therefore, the embargo at worst can be attracted as far as those two accused.

This petition is disposed of as follows:

- 1) Petitioners, except petitioners 2 and 15, shall surrender before the Investigating Officer on or

before **11.01.2016**, who, after interrogation, shall produce them before the JFCM court concerned, which court, on an application for bail being moved by the petitioners shall release them on bail on each of them executing a bond for a sum of ₹ 25,000/- (Rupees Twenty Five thousand only) with two solvent sureties for the like sum each to the satisfaction of the said court.

- 2) The court concerned shall ensure the identity of the sureties and the veracity of the tax receipts, before granting bail.
- 3) Petitioners shall appear before the Investigating Officer on every Wednesday between 9.00 am and 11.00 am until further orders.
- 4) Petitioners shall not tamper or attempt to tamper with the evidence and influence or try to influence the witnesses.

- 5) If any of the conditions is violated, the bail granted shall stand cancelled and the court concerned, of being satisfied of the said fact, may take such proceedings as are available in law.

As far as petitioners 2 and 15 are concerned, they may surrender before the Investigating Officer on or before **11.01.2016**, who after interrogation, shall produce them before the JFCM Court concerned. If the petitioners move an application for bail before the said court, the learned Magistrate shall consider and pass appropriate orders thereon in accordance with law, preferably on the date of surrender itself in view of the decision reported in **Shanu v. State of Kerala (2000(3) KLT 452)**.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge