

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

Bail Appl..No. 8007 of 2015 ()

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CRIME NO. 1316/2015 OF MUNDAKAYAM POLICE STATION, KOTTAYAM DISTRICT.**

PETITIONERS/ACCUSED NO.1 TO 4:

- 1. ABDUL KHADER, AGED 55 YEARS,
S/O. ALI, CHERUTHODIYIL HOUSE,
CHITTADY P.O., EDAKKUNNAM VILLAGE.**
- 2. MUHAMMED SEEDI, AGED 72 YEARS,
S/O. MEERAN MOITHEEN, PATTANIVEEDU,
CHITTADY P.O., EDAKKUNNAM VILLAGE.**
- 3. SHIHAB SEEDI, AGED 41 YEARS,
S/O. MUHAMMED SEEDI, PATTANIVEEDU,
CHITTADY P.O., EDAKKUNNAM VILLAGE.**
- 4. HAMSA MOULAVI, AGED 42 YEARS,
S/O. KUNJU MUHAMMED, CHEHANAKATTIL HOUSE,
PUNNAYAR IMAM, KHADARIA MASJIDUL MUSLIM JAMATH,
CHITTADY P.O., CHOTTI.**

**BY ADVS.SRI.LIJI.J.VADAKEDOM,
SMT.REXY ELIZABETH THOMAS,
SRI.RAJEEV JYOTHISH GEORGE.**

RESPONDENTS/STATE:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. SUB INSPECTOR OF POLICE, MUNDAKAYAM,
MUNDAKAYAM POLICE STATION, KOTTAYAM DISTRICT-686 001.**

BY PUBLIC PROSECUTOR SMT.S. HYMA.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 18-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

K.P.JYOTHINDRANATH, J.

B.A.No.8007 OF 2015

Dated this the 18th day of December, 2015

ORDER

This is an application filed under Section 438 of the Code of Criminal Procedure, 1973. The learned counsel for the petitioners submits that the petitioners are accused 1 to 4 in Crime No.1316/2015 of Mundakayam police station.

2. When the bail application came up for hearing, it is submitted that the only non bailable offence now alleged against the petitioners is under Section 332/353 of IPC. It is the submission that no stretch of imagination can say that the defacto complainant is a public servant, which will attract an offence under Section 353 of IPC.

3. The facts in a nut shell is that the Chief Executive Officer of the Wakf Board authorised the defacto complainant to conduct election as well as he was appointed as Muttawalli of Khadaria Masjidul Muslim Jamath. There occurred an incident and on the basis

of the complaint of the said officer, the crime registered.

4. I heard the learned Public Prosecutor. The learned Public Prosecutor submitted before me that the Wakf Board is a statutory body and the Chief Executive Officer is the person who is empowered to authorise or appoint Returning Officers or Muthawalli as per the statute for which remuneration can be given . If the Government money is received by the person, it can be seen that he will come under the purview of public servant.

5. It is a matter to be considered by the trial court and I am not expressing any opinion/finding on the same. Considering the totality of the case, the following order passed :

1) The petitioners shall appear before the Investigating Officer within ten days of this order. On such appearance, the Investigating Officer is at liberty to interrogate the petitioners. After interrogation, if the police officer feels that arrest is necessary, he is at liberty to arrest the petitioners. Thereafter, the petitioners shall be released on bail on executing a bond for Rs.25,000/- each with two solvent sureties each for the like amount to the satisfaction of the officer concerned.

2) After release on bail, the petitioners shall appear before the Investigating Officer on all Saturdays in between 10 a.m. and 12 noon for a period of two months.

3) The petitioners shall not commit similar offences during the bail period.

4) The petitioners shall not influence or intimidate the witnesses.

On the above conditions, this anticipatory bail application is allowed.

K.P.JYOTHINDRANATH
JUDGE

SV.