

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

Bail Appl.No. 8503 of 2014

CRIME NO. 2815/2014 OF MUVATTUPUZHA POLICE STATION, ERNAKULAM

PETITIONER(S)/ACCUSED 1,2 AND 4:

1. FAIZAL, AGED 40 YEARS,
S/O.ALIYKUNJU, NELLIMATTATHIL HOUSE, MULAVOOR VILLAGE,
PUNNOPPADDI KARA, MUDAVOOR P.O.
2. AFZAL, AGED 37 YEARS,
S/O.ALIYKUNJU, NELLIMATTATHIL HOUSE, MULAVOOR VILLAGE,
PUNNOPPADDI KARA, MUDAVOOR P.O.
3. ALIKUNJU, AGED 67 YEARS,
NELLIMATTATHIL HOUSE, MULAVOOR VILLAGE,
PUNNOPPADDI KARA, MUDAVOOR P.O.

**BY ADVS.SRI.GEORGE SEBASTIAN
SRI.BYJU KURIAKOSE**

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT.LALIZA T.Y.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
23-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

B.KEMAL PASHA, J.

B.A.No.8503 of 2014

Dated this the 23rd day of January 2015

ORDER

Petition under Section 438 Cr.P.C.

2. Petitioners are accused Nos.1 to 3 respectively in Crime No.2815/2014 of Muvattupuzha Police Station registered for the offences punishable under Sections 323, 324, 326 and 506(ii) read with Section 34 of the Indian Penal Code.

3. It is alleged that the petitioners have attempted to put up a cattle farm in their property, which is just near to the well of the de-facto complainant. The de-facto complainant filed a suit for procuring a decree of perpetual injunction. A commission was taken out in the suit, and on 5.11.2014 at 4 p.m., the Commissioner visited the property and the de-facto complainant

pointed out the place where his well is situated and the place where the cattle farm was attempted to be constructed. Out of that enmity, it is alleged that the de-facto complainant and others were severely attacked by the petitioners. It is alleged that the first petitioner beat the younger brother of the de-facto complainant on his back with a short stick, the second petitioner kicked down the de-facto complainant and thereafter, the first petitioner beat on the left knee of the younger brother of the de-facto complainant with an iron rod, thereby causing a fracture of his knee and fracture of the bones of his left leg. It is alleged that the second petitioner beat on the head of the de-facto complainant with a short stick and on his right elbow, thereby causing fracture to the right elbow and serious head injuries. The allegation against the third petitioner is that he slapped the younger brother of the de-facto complainant on the left side of his face and pushed down the de-facto complainant.

4. Heard the learned counsel for the petitioners, the

learned counsel for the de-facto complainant and the learned Public Prosecutor.

5. The contents of the C.D. *Prima facie* reveal the complicity of the petitioners. At the same time, it seems that the third petitioner, who is the father of petitioners 1 and 2, has not made use of any weapon. The only allegation against him is that he pushed down the de-facto complainant and he slapped on the left side of the face of the younger brother of the de-facto complainant. No criminal antecedents have been reported against the third petitioner. I do not think that the custodial interrogation of the third petitioner is required for the continued investigation of this case. Matters being so, I am of the view that this is a fit case wherein anticipatory bail can be granted to the third petitioner. At the same time, considering the seriousness of the allegations against petitioners 1 and 2 and the present stage of investigation, I am satisfied that they are not entitled to the discretionary relief of

anticipatory bail.

6. In the result, this bail application is allowed in part and the investigating officer or such other police officer, who is conducting the arrest of the third petitioner, is directed to enlarge the third petitioner on bail in the event of his arrest on his executing a bond for Rs25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the officer conducting arrest, and subject to the following terms and conditions:-

(i) The third petitioner shall report before the investigating officer in between 9 a.m. and 11 a.m. on all Fridays and Tuesdays, commencing from 30.01.2015 for a period of three months or till the filing of the final report in this case, whichever is earlier.

(ii) The third petitioner shall not tamper with the evidence or influence witnesses.

(iii) The third petitioner shall make himself available for interrogation as and when required by the

investigating officer.

(iv) The third petitioner shall not involve in any offence while on bail.

It is made clear that the violation of any of the conditions stipulated above will result in the cancellation of bail.

This bail application, as far as petitioners 1 and 2 are concerned, is dismissed.

Sd/-
B.KEMAL PASHA,
JUDGE

dl

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PA to Judge