

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

Bail Appl..No. 8669 of 2014

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CrI.MC 1582/2014 of SESSIONS COURT,MANJERI  
CRIME NO. 797/2014 OF CHANGARAMKULAM POLICE STATION , MALAPPURAM

PETITIONER/ACCUSED NO.2:

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ASHARAF, AGED 52 YEARS  
S/O.BAPPU HAJI, THOTTUPADATHUVALAPPIL HOUSE  
VATTAMKULAM P.O., MALAPPURAM DISTRICT.

BY ADVS.SRI.PRASUN.S  
SRI.PAUL MATHEW (PERUMPILLIL)

RESPONDENT/COMPLAINANT-STATE:

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STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM, PIN 682031  
REPRESENTING THE SUB-INSPECTOR OF POLICE  
CHANGARAMKULAM POLICE STATION.

BY PUBLIC PROSECUTOR, SMT.LALIZA T.Y.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
22-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**B.KEMAL PASHA, J.**

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B.A.No.8669 of 2014  
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Dated this the 22<sup>nd</sup> day of January 2015

ORDER

Petition under Section 438 Cr.P.C.

2. Petitioner is the second accused in Crime No.797/2014 of Changaramkulam Police Station, Malappuram district pending investigation for the offences punishable under Sections 143, 148, 323, 324, 326, 341 and 448 of Indian Penal Code read with Section 149 of the Indian Penal Code.

3. The allegation against the petitioner and the other accused is that on 1.10.2014 at 5 p.m., they formed themselves into an unlawful assembly armed with deadly weapons like sticks and

iron chain, committed trespass into the shop room of the de-facto complainant and attacked them. It is alleged that the third accused wrongfully restrained the de-facto complainant, the first accused beat him with stick and the second accused beat him with an iron chain. The other accused had also allegedly assisted the petitioner in the attack towards the de-facto complainant.

4. Heard learned counsel for the petitioner and learned Public Prosecutor.

5. It has been pointed out that even though the incident had occurred on 1.10.2014, the crime was registered only on 20.10.2014. The learned counsel for the petitioner has pointed out that the shop room, which belongs to the petitioner and his mother, was leased out to the de-facto complainant and as she has not cared to vacate the premises, a R.C.P. was filed against him. In the said R.C.P., a commission was issued by the Rent Control Court. The commissioner came to the property for inspection for preparing the

mahazar and report. Along with the commissioner, the petitioner also went to the property. Then, the de-facto complainant indiscriminately attacked the petitioner and the commissioner. The commissioner, who is a lady lawyer, took shelter in her car. Then the de-facto complainant pelted stones on the car, thereby damaging the wind shield of the car. However, she has escaped. A case was registered against the de-facto complainant on the complaint of the commissioner and, in the said case, the de-facto complainant was arrested and detained. On getting bail, he came out and immediately furnished the present first information statement before the police.

6. The matters relating to the other crime have not been revealed by the de-facto complainant in the first information statement, in this case. The delay caused in filing the F.I.R. has not been explained anywhere. Considering the facts and circumstances of the case, I am of the view that this is a fit case wherein

anticipatory bail can be granted to the petitioner as the custodial interrogation of the petitioner is not required for the continued investigation of the case.

5. In the result, this bail application is allowed and the investigating officer or such other police officer, who is conducting the arrest of the petitioner, is directed to enlarge the petitioner on bail in the event of his arrest on his executing a bond for Rs.25,000/- (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 petitioner shall report before the investigating officer in between 9 a.m. and 11 a.m. on all Thursdays and Mondays commencing from 29.1.2015 for a period of three months or till the filing of the final report in this case, whichever is earlier.

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

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

(iv) The 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.

Sd/-  
**B.KEMAL PASHA,**  
JUDGE

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*PA to Judge*