

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

Bail Appl..No. 9134 of 2014

**CRIME NO. 720/2014 OF MARARIKKULAM POLICE STATION, ALAPPUZHA DISTRICT.
(REREGISTERED AS CBCID CASE NO.425/CR/STATS/13 OF CBCID, THRISSUR AND
INVESTIGATED BY DY.S.P. CBCID, HHW-11, ALAPPUZHA SUB UNIT)**
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PETITIONERS/ACCUSED NOS 3 TO 5:

- 1. DEEPU, AGED 36, S/O PURUSHAN,
CHELLIKANDATHIL VEEDU,
MUHAMMA P.O., ALAPPUZHA.**
- 2. RAJESH, AGED 36, S/O C.K.RAJAN,
CHELLIKANDATHIL VEEDU, MUHAMMA P.O.,
ALAPPUZHA.**
- 3. PRAMOD, AGED 30, S/O MOHANAN,
VADAKKECHIRA, MUHAMMA.**

BY ADV. SRI.C.P.UDAYABHANU

RESPONDENT/COMPLAINANT:

**STATE OF KERALA, BY THE S.I. OF POLICE,
MARARIKKULAM (CRIME NO.720/14) NOW
INVESTIGATED DY.SP., CBCID, HHW-11,
ALAPPUZHA SUB UNIT,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN:682031.**

BY SRI.ASIF ALI FOR DGP

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 05-01-2015 ALONG WITH BA.9153/2014, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:**

mbr/

B.KEMAL PASHA, J.

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B.A. Nos. 9134 & 9153 of 2014

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Dated this the 5th day of January, 2015

ORDER

Petitions filed under Section 438 Cr.P.C.

2. Factional feud, allegedly occurred in a political party, had lead to an untoward incident. The petitioners in B.A.No.9134 of 2014 are A3 to A5 and the petitioner in B.A.No.9153 of 2014 is A2 in Crime No.720 of 2013 of the Mararikulam Police Station, presently being investigated by the CBCID as CBCID Crime No.425/CR/STATS/2013 of CBCID, Thrissur, for the offences punishable under Sections 120 B, 153, 447, 427 and 436 read with Section 34 IPC.

3. On 31.03.2013 at about 1.30 a.m., some miscreants had set ablaze the memorial building with thatched roof of late Comrade P.Krishnapillai. A portion of the building caught fire.

There was allegedly an attack on the statue of Comrade P.Krishnapillai, which caused some minor damage to the statue. Some of the articles kept inside the building including a coat have become burnt.

4. Heard Sri.B.Raman Pillai, the learned Senior Counsel for A2, Sri.C.P.Udayabhanu, the learned counsel for A3 to A5 and Sri.Asaf Ali, the learned Director General of Prosecution.

5. The investigation started on the basis of the First Information Statement furnished by the present 3rd accused, who is the 1st petitioner in B.A.No.9134 of 2014. There was an attempt to implicate the followers and sympathizers of a rival political party in the incident by attributing the blame upon them.

6. It seems that the petitioners had earlier approached the Sessions Court, Alappuzha through Cri.M.P.Nos.4941 of 2014, 4958 of 2014 and 4992 of 2014 seeking anticipatory bail. All those applications were disposed of by the learned Sessions Judge through order dated 17.12.2014 with the

following observations.

“In the result, the Criminal Miscellaneous Petitions are disposed off with a direction to the petitioners to surrender before the Investigating Officer on 22nd day of December, 2014, for interrogation. If interrogation is not completed on that day, the petitioners are directed to appear before the investigating officer on the day and time as directed by the latter. After the interrogation, the petitioners shall be produced before the learned Magistrate having jurisdiction on the same day. The learned Magistrate shall consider the bail application, if any, moved by the petitioners and application, if any, filed by the investigating officer for getting the petitioners in custody, if custodial interrogation is found necessary during the questioning, without delay, in accordance with law.”

7. The learned Senior Counsel for A2 has argued that the aim of the prosecution is to take away the employment of A2, who is a public servant, by falsely implicating him as an accused. Both the learned Senior Counsel, as well as the learned counsel appearing for the other petitioners have argued that the petitioners are ardent workers of CPI(M) political party and they are still continuing as its members. They point fingers towards the prosecution by alleging political enmity towards the CPI(M) party by ruling front for alleged false implication in the crime. Per contra, the learned DGP

has argued that the ruling front has no axe to grind towards any of the members of the CPI(M) party, and that the CPI(M) political party themselves have taken action against the miscreants including these petitioners, who have set ablaze the memorial and have done the mischief.

8. The learned DGP has pointed out that the CPI(M) political party themselves have endorsed the correctness of the line of investigation. According to the learned DGP, it was the factional feud that had occurred within the political party, which paved way for the mischief in this case. The learned counsel for A3 to A5 who are petitioners 1 to 3 in B.A.No.9134 of 2014 has argued that the petitioners were ready and willing to undergo any kind of test like polygraph analysis. At the same time, the learned DGP has controverted the said argument by pointing out that they have never come forward for any such test.

9. The contents of the CD *prima facie* point fingers towards the factional feud within the said political party as the

cause of the incident. The investigation of this case is not over and the investigation is in progress. I do not think that it is appropriate at this stage to consider the merits of the evidence so far collected by the investigating officer. At present, there are elements to suspect the complicity of the petitioners. The contents of the CD *prima facie* reveal their complicity.

10. It seems that one Chellikkandam family had donated the said 20 cents of property to set up the memorial of late Comrade P.Krishnapillai, who was a renowned political leader and had even raised voice against the Britishers. It seems that the damage caused to the memorial and statue had arouse severe unrest against the sympathizers and followers of the said political party, and the followers of late Comrade P.Krishnapillai, which had in fact resulted in an attack towards the Indira Gandhi Memorial also. The real miscreants were hiding behind the screen and were watching the political feud between the two political parties. The

investigation has a long way to go. On going through the order passed by the learned Sessions Judge, I do not see anything to interfere with the said order. The main attack forwarded by the learned Senior Counsel for A2 is that A1, who had willingly surrendered on the basis of the order passed by the learned Session Judge, was detained till late night on the date of his surrender on 22.12.2014, and thereafter, he was produced before the learned Magistrate at the residence.

11. The learned DGP has also pointed out that the petitioners have got serious criminal background as serious criminal antecedents are there on their part. The learned Senior Counsel and the counsel for the petitioners have pointed out that apart from some cases relating to political rivalry, there are no other criminal antecedents on their part.

12. The learned DGP has pointed out that the petitioner, who had not cared to surrender on 22.12.2014 had later filed an application before the learned Sessions Judge by way of a

Crl.M.P. seeking an extension of the time for surrender by stating that on 22.12.2014, he was undergoing treatment as in-patient at the Medical Trust Hospital, Kochi and therefore he could not surrender before the investigating officer as directed by the learned Sessions Judge. After having filed such an application, A2 cannot be heard to say that he is not ready to surrender before the investigating officer. At the same time the learned Senior Counsel has pointed out that the said application was later withdrawn, on coming to know about the fate of A1, who had surrendered. Those are not reasons to canvass for anticipatory bail in a serious case like this. The investigation has a long way to go. This is not a fit case wherein anticipatory bail can be granted.

In the result, these bail applications are dismissed. At the same time, if so advised, the petitioners may surrender before the investigating officer within ten days from today and in such case, the investigating officer can interrogate the petitioners, effect recovery if any, and conduct the

investigation and produce the petitioners without delay before the concerned Judicial First Class Magistrate's Court, where the petitioners can move for bail. In such case, the learned Magistrate shall pass appropriate orders, preferably on the same day itself, provided advance notice on such application has been given to the Assistant Public Prosecutor also.

Sd/-
B. KEMAL PASHA
JUDGE

DSV/5/1/15

/True Copy/

P.A. to Judge