

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

Bail Appl..No. 9166 of 2014

CRIME NO. 979/2014 OF KASARAGOD POLICE STATION , KASARGOD

PETITIONER(S)/ACCUSED NOS. 3 & 4 :

1. K.G.VENUGOPAL, AGED 35 YEARS,
S/O.LATE K.V.GOPINATHA PAI, GOKULAM, OLD THIRUMALA,
ALAPPUZHA, PIN-688 011.
2. N.RAMESH BHAT, AGED 50 YEARS,
S/O.LATE A.NARAYANA BHAT, NADAKKE PARAMBIL HOUSE,
T.D.EAST SANNIDHI ROAD, ERNAKULAM, COCHIN, PIN- 682 035.

**BY ADVS.SRI.O.V.MANIPRASAD
SRI.M.RISHIKESH SHENOY**

RESPONDENT(S)/COMPLAINANT :

1. THE STATE OF KERALA,
(SUB INSPECTOR OF POLICE,
KASARAGOD POLICE STATION CRIME NO.979/2014),
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.
2. THE SUB DIVISIONAL POLICE OFFICER,
KASARAGOD SUB DIVISION, KASARAGOD,
KASARAGOD P.O., PIN- 671 124.

*** ADDITIONAL R3 IMPEADED**

3. GIRIDHAR VISWANATH KAMATH, AGED 64 YEARS,
S/O.VISWANATHA SUBRAYA KAMATH, MANAGING TRUSTEE,
SRI.VARADARAJA, VENKATRAMANA TEMPLE, KASARAGOD,
"SRIPRASAD", SUBRAYA ANANTHA KAMATH ROAD,
KASARAGOD.(WITHIN THE LIMITS OF KASARAGOD POLICE STATION).

*** ADDITIONAL R3 IS IMPEADED AS PER ORDER DATED 08.01.2015 IN
CRL.M.A.NO.166/2015.**

**R1 & R2 BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH
ADDL.R3 BY SRI.C.K.SREEDHARAN (SENIOR ADVOCATE)
ADV. SRI.SUNNY MATHEW**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14-01-2015,
ALONG WITH BA.NO.9188 OF 2014 AND CONNECTED CASES, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:**

Msd.

B. KEMAL PASHA, J.

.....
B.A. Nos.9166, 9188, 9189 & 9221 of 2014
.....

Dated this the 14th day of January, 2015

ORDER

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Petition under Section 438 Cr.P.C.

2. Petitioners in B.A.No.9166/2014 are A3 and A4 and petitioner in B.A.No.9189/2014 is A2 in Crime No.979/2014 of Kasaragod Police Station registered for the offences punishable under Sections 465, 468, 471 and 482 read with Section 34 IPC.

3. The learned Public Prosecutor has pointed out that petitioners in B.A.No.9188/2014 and B.A.No.9221/2014 have not been arraigned as accused in the crime so far and their applications seeking anticipatory bail are premature.

4. The allegation against the petitioners in B.A.No.9166/2014 and B.A.No.9189/2014 is that, as a part of their attempts to fortify an illegal propaganda that the 1<sup>st</sup> accused in the crime is the *Matathipathi* of *Kashi Math* of

the Gowda Saraswatha Brahmin Community. They have published a series of booklets in the name and style as “*Sreevyasavani*”, which contains the insignia of the *Kashi Math* along with the photograph of Sree Raghavendra Theertha Swami, who is none other than the 1<sup>st</sup> accused, by falsely styling him as the *Matathipathi*. The allegation is that they have thereby cheated and defrauded the members of the Gowda Saraswatha Brahmin Community as a whole.

5. Heard the learned counsel for the petitioners, the learned counsel for the *defacto complainant* and the learned Public Prosecutor.

6. The crime has been registered on the basis of a private complaint filed by the *defacto complainant* before the Judicial First Class Magistrate's Court, Kasaragod, which was referred to the police under Section 156(3) Cr.P.C. Various disputes are also pending between the two factions in the community. One of the factions was being led by the 1<sup>st</sup> accused, who has gone in hiding now. It is alleged that

the 1<sup>st</sup> accused has gone in hiding with the treasure, idols, etc., the value of which is running to crores of rupees and even on the orders of this Court, so far he could not be traced out even though he was ordered to surrender those properties including the treasure and idols of the *Math*. He has not so far obeyed the orders of this Court. All attempts to trace out him have become futile. It is the case of the learned counsel for the *defacto complainant* that if anticipatory bail is granted to these petitioners, it may not be possible to trace out the 1<sup>st</sup> accused in the case.

7. The only allegation against these petitioners is that they had aided the 1<sup>st</sup> accused in publishing such booklets by falsely styling the 1<sup>st</sup> accused as the *Matathipathi* of the *Kashi Math*. Apart from that, there are no other allegations against these petitioners. It seems that this is not a case wherein the custodial interrogation of the petitioners in B.A.No.9166/2014 and B.A.No.9189/2014 is required to establish the case against the petitioners. If at

all they have committed such acts, documentary evidence is there to prove the prosecution. If the case rests solely on documentary evidence, their custodial interrogation is not warranted in a matter like this. Even though the learned counsel for the *defacto complainant* has pointed out that if anticipatory bail is granted to these petitioners, the arrest of the 1<sup>st</sup> accused in the case would be delayed, as no legs to stand. I do not think that the petitioners can be detained in a matter like this for enabling the arrest of the 1<sup>st</sup> accused, especially when there are no other allegations against the petitioners. If there is any violation of the order of injunction passed by the civil court, it is for the concerned party to move under Order 39 Rule 2A CPC. Matters being so, I am of the view that this is a fit case wherein anticipatory bail can be granted to the petitioners.

8. In the result, B.A.Nos.9166/2014 and 9189/2014 are allowed and the investigating officer or such other police officer, who is conducting the arrest of the petitioners in

B.A.Nos.9166/2014 and 9189/2014, is directed to enlarge them on bail in the event of their arrest on each of them executing a bond for ₹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 petitioners in B.A.Nos.9166/2014 and 9189/2014 shall report before the investigating officer in between 9 a.m. and 11 a.m. on all Wednesdays and Saturdays, commencing from 21.01.2015 for a period of three months or till the filing of the final report in this case, whichever is earlier.*

*(ii) The petitioners in B.A.Nos.9166/2014 and 9189/2014 shall not tamper with the evidence or influence witnesses.*

*(iii) The petitioners in B.A.Nos.9166/2014 and 9189/2014 shall make themselves available for interrogation as and when required by the investigating officer.*

*(iv) The petitioners in B.A.Nos.9166/2014 and 9189/2014 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.

B.A.Nos.9188/2014 and 9221/2014 are dismissed. In case the police wants to arrest the petitioners in B.A.Nos.9188/2014 and 9221/2014 in connection with any non-bailable offence involved in this case, the investigating officer shall give an opportunity to them to approach this Court under Section 438 of the Code of Criminal Procedure.

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

aks/14/01

*// True Copy //*

*PA to Judge*