

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.UBAID

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

Crl.MC.No.1865 of 2015

(CRIME NO.217/2015 OF KUZHALMANNAM POLICE STATION,PALAKKAD).

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PETITIONERS/ACCUSED NOS 3,4,5,& 6:

- 1. MANICKAN PILLAI,AGED 70 YEARS,
S/O.ARMUGHAN PILLAI,KONAKALATHU KALAM,
CHERUTHAPPALLOOR, HENKURISSI,PALAKKAD.**
- 2. PAZHANIYAPPAN PILLAI,AGED 60 YEARS,
S/O.ARUMUGHAN PILLAI,KONAKALATHU KALAM,
CHERUTHAPPALLOOR,THENKURISSI,PALAKKAD.**
- 3. PRADEEP,AGED 27 YEARS,S/O.MANICKAN PILLAI,
KONAKALATHU KALAM,CHERUTHAPPALLOOR,
'THENKURISSI,PALAKKAD.**
- 4. REVIKUMAR @ PRADEEPKUMAR,AGED 29 YEARS,
S/O.MANICKAN PILLAI,KONAKALATHU KALAM,
CHERUTHAPPALLOOR,THENKURISSI,PALAKKAD.**

**BY SRI.P.VIJAYA BHANU (SENIOR ADVOATE.)
ADVS.SRI.V.A.JOHNSON (VARIKKAPPALLIL)
SRI.V.C.SARATH**

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT.P.MAYA.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 31-03-2015, ALONG WITH CRMC 1981/2015 THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:**

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Crl.MC.No.1865 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE A:TRUE COPY OF THE F I R IN CRIME NO.218/2015 OF
COYALMANNAM POLICE STATION,PALAKKAD DISTRICT.**

**ANNEXURE B:TRUE COPY OF THE FIR NO.217/2015 OF COYALMANNAM POLICE
STATION DTD 3/3/2015**

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

P. UBAID, J.

Crl.M.C.Nos.1865 & 1981 of 2015

Dated this the 31st day of March, 2015

O R D E R

The petitioners in Crl.M.C.No.1865/2015 are the accused Nos.3 to 6 in Crime No.217/2015 of the Kuzhalmandam Police Station registered under Sections 143p, 147, 148, 307, 324 and 341 IPC read with 149 IPC, and also under Sections 3(1)(x) and 3(1)(xi) of The Scheduled Castes & The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the SC/ST Act'), on the complaint of one Ramadas, who claims to be a member of Scheduled Caste, and the petitioners in Crl.M.C.No.1981/2015 are two of the other accused in the said crime. The petitioners apprehend arrest by the police as part of investigation. In view of the prohibition contained in Section 18 of the SC/ST Act, they cannot apply for pre-arrest bail. Now, they want to surrender before the learned Magistrate having jurisdiction, and make application for regular bail. On the apprehension of remand to judicial custody, they seek appropriate orders from this Court to the learned Magistrate having jurisdiction. In fact the prayer of the petitioners is to direct the learned Magistrate to release them on bail, on surrender. Such a relief cannot be granted by this

Court under Section 482 Cr.P.C. The proper remedy available to them is to surrender before the authority, and seek regular bail. If this Court directs the learned Magistrate to release them on bail, it will amount to granting pre-arrest bail, which is prohibited under Section 18 of the SC/ST Act. The petitioners will have to surrender before the investigating officer, or the learned Magistrate having jurisdiction. Though pre-arrest bail is prohibited, regular bail can be granted by the learned Magistrate, if the petitioners are entitled for bail, or if there is no factual or legal reason to deny bail. One contention raised by the petitioners is that Section 307 IPC was incorporated in the FIR by the police on the basis of some hypothetical statement, and that there is absolutely no definite material for such a prosecution. This will have to be looked into by the learned Magistrate, when application for bail comes. As regards the offence under the provisions of the SC/ST Act, it is observed that the learned Magistrate will have to examine the case records, and satisfy himself whether the necessary elements and ingredients of the said offences are there in the complaint. Any way, let appropriate decision regarding bail be taken by the learned Magistrate. It is

submitted that there is a counter case, wherein some of the petitioners herein are the injured victims. This also will have to be considered by the learned Magistrate in the decision making process.

In the result, these two Crl.M.C.s are disposed of as follows:

- a) The petitioners in these two petitions can surrender before the investigating officer, or before the learned Magistrate having jurisdiction.
- b) If custodial interrogation of the petitioners is found absolutely necessary, and if the application to that effect is filed by the police, appropriate orders shall be passed by the learned Magistrate. Custody to the police can be given only if there is absolute necessity of interrogation, in the particular nature and circumstance of the offences alleged.
- c) If the petitioners surrender before the investigating officer, they shall be produced before the learned Magistrate, after necessary interrogation by 4 p.m. on the date of surrender itself.
- d) In case the petitioners are produced by the investigating officer, or if the petitioners surrender voluntarily before the learned Magistrate, application for bail, if any, filed by the

petitioners shall be heard and decided by the learned Magistrate judiciously, and appropriate decision regarding bail shall be taken on the date of filing of the application itself.

Sd/-

P. UBAID, JUDGE

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