

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 24TH DAY OF APRIL 2015/4TH VAISAKHA, 1937

Cr1.MC.No. 2503 of 2015 ()

AGAINST THE ORDER IN CMP 1412/2015 of J.M.F.C.-I, KOLLAM
CRIME NO. 362/2015 OF ANCHALUMMOODU POLICE STATION , KOLLAM

PETITIONERS/ACCUSED:

1. AJITH ANAND, AGED 28 YEARS,
S/O.DAYANANDA PILLAI, DASARA, CHEMMAKKAD CHERRY,
PERINAD VILLAGE, KOLLAM.

2. DAYANANDA PILLAI, AGED 62 YEARS,
DASARA, CHEMMAKKAD CHERRY, PERINAD VILLAGE,
KOLLAM.

3. SATHI,
W/O.DAYANANDA PILLAI, DASARA, CHEMMAKKAD CHERRY,
PERINAD VILLAGE, KOLLAM.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS/COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE STATION HOUSE OFFICER,
ANCHALUMMOODU POLICE STATION, KOLLAM DISTRICT
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

2. THE ASSISTANT COMMISSIONER OF POLICE
KOLLAM CITY, KOLLAM 691 001.

3. THE COMMISSIONER OF POLICE, KOLLAM CITY,
KOLLAM 691 001.

4. SMT.SANDHYAMOL, AGED 32 YEARS,
D/O.SARASWATHI, SARASWATHI BHAVAN, PRAKULAM CHERRY,
THRIKKARUVA VILLAGE, KOLLAM 691 016.

BY PUBLIC PROSECUTOR SMT.M.T. SHEEBA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
24-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE A1. COPY OF THE COMPLAINT CMP NO.1412/15 FILED BY THE 4TH
RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT 1, KOLLAM.

ANNEXURE A2. COPY OF THE LEAVE CERTIFICATE ISSUED BY THE ARMY
HEADQUARTERS TO THE 1ST PETITIONER DATED 16.03.14.

ANNEXURE A3. COPY OF THE LEAVE CERTIFICATE ISSUED BY THE ARMY
HEADQUARTERS TO THE 1ST PETITIONER DATED 5.8.14.

ANNEXURE A4. COPY OF THE LEAVE CERTIFICATE ISSUED BY THE ARMY
HEADQUARTERS TO THE 1ST PETITIONER DATED 16.10.14.

ANNEXURE A5. COPY OF THE LEAVE CERTIFICATE ISSUED BY THE ARMY
HEADQUARTERS TO THE 1ST PETITIONER DATED 03.02.15.

ANNEXURE A6. COPY OF THE JUDGMENT IN CRL.MC 1863/13 DATED 17.05.13 OF
THIS HONOURABLE COURT.

RESPONDENTS' ANNEXURES: NIL

/TRUE COPY/

P.S TO JUDGE

K. RAMAKRISHNAN, J.

.....
Crl.M.C.No.2503 of 2015

.....
Dated this the 24th day of April, 2015.

O R D E R

Accused 1 to 3 in Crime No.362/2015 of Anchalummoodu police station have filed this petition seeking a direction to the Magistrate under section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that the first petitioner is working in Army Headquarters in AIR SP SIG Unit, C/o. 56 APO and petitioners 2 and 3 are parents of the first petitioner. The petitioners were implicated as accused 1 to 3 in Crime No.362/2015 of Anchalummoodu police station, Kollam district alleging offences under sections 376, 506(ii) read with section 34 of the Indian Penal Code and section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'the SC and ST Act' for short), which was registered on the basis of Annexure-A1 complaint filed by the 4th respondent before the Judicial First Class Magistrate Court-I, Kollam, which was forwarded to the police for investigation under section 156(3) of the Code. As per

Annexures-A2 to A5 produced by the petitioners, the allegations made cannot be true and they have been falsely implicated in the case. In view of the bar under section 18 of the SC and ST Act, anticipatory bail cannot be obtained in cases where the allegation of commission of offence under that Act has been alleged. So the petitioners have no other remedy except to approach this Court seeking the following relief:

“For the above reasons and other valid grounds that are to be urged at the time of hearing it is most humbly prayed in the interest of justice that this Hon'ble Court may be pleased to direct the Judicial First Class Magistrate Court-I, Kollam to release the petitioners on bail in case of their surrender before the Court in Annexure-A1 complaint in Crime No.362/2015 of Anchalumoodu Police Station in the light of Annexure-A6 judgment and the decision rendered by this Hon'ble Court in **2003(3) KLT 452 in Shanu v. State of Kerala**”.

3. Considering the nature of relief claimed, this Court felt that the petition can be disposed of after hearing the counsel for the petitioners and learned Public Prosecutor appearing for respondents 1 to 3 and dispensing with notice to the fourth respondent.

4. The counsel for the petitioners submitted that in view of

the dictum laid down in **Shanu v. State of Kerala** (2000 (3) KLT 452), the Magistrate has got power to grant bail even if offence under the SC and ST Act has been incorporated. The learned counsel has relied on Annexure-A6 order of this Court in a similar matter.

5. The application was opposed by the Public Prosecutor.

6. It is admitted in the petition itself that on the basis of Annexure-A1 private complaint filed by the 4th respondent before the Judicial First Class Magistrate Court-I, Kollam, which was forwarded to the police for investigation by the learned Magistrate under section 156(3) of the Code, Crime No.362/2015 of Anchalummoodu police station of Kollam district was registered against the petitioners alleging offences under sections 376, 506(ii) read with section 34 of the Indian Penal Code and Section 3(1)(x) of SC and ST Act and investigation is in progress. Section 18 of the SC and ST Act bars granting anticipatory bail under section 438 of the Code in a case where allegation of commission of offence under the said Act has been alleged. But, that will not be a ground for the petitioners to move this Court directing the magistrate to grant bail or directing the petitioners to surrender

before the investigating officer and directing the investigating officer to deal with the petitioners in accordance with law. It is true that in the decision reported in **Shanu's case** (cited supra), it has been observed that merely because offence under the SC and ST Act has been incorporated, that will not interdict the power of the magistrate in appropriate cases to consider the bail application if any filed and grant bail to accused persons, if they surrender before that court. The nature of offence mentioned in Annexure-A6 is different from the offence mentioned in this case. Further, this Court feels that the petition can be disposed of as follows:

If the petitioners surrender before the Judicial First Class Magistrate Court,-I, Kollam and move for bail in Crime No.362/2015 of Anchalummoodu police station, then the learned Magistrate is directed to consider and dispose of the bail application in accordance with law taking into consideration the principle laid down in **Shanu's case** (cited supra) and also the nature of offences alleged after hearing the Assistant Public Prosecutor of that court on the date of filing of the application itself as far as possible in accordance with law.

With the above directions and observations, this petition is

disposed of.

Office is directed to communicate a copy of this order to the concerned court immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

