

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

Crl.MC.No. 6345 of 2015 ()

CRIME No. 476/2015 OF NILAMBUR POLICE STATION , MALAPPURAM DISTRICT

PETITIONERS/ACCUSED:

- 1. SIDIQALI, AGED 38 YEARS, S/O.ALI
CHAKKUMUGATH HOUSE, TANA
MAMBAD P.O., MALAPPURAM DISTRICT**
- 2. SEETHIKOYA, S/O. MUHAMMED, AGED 47 YEARS
ILLIKKAL HOUSE, KAATTUMUNDA
NADUVATH P.O., MALAPPURAM DISTRICT**
- 3. RAFEEL, S/O. SAIDALAVI, AGED 32 YEARS
PEVUMKADAN HOUSE, KAATTUMUNDA
NADUVATH P.O., MALAPPURAM DISTRICT**

**BY ADVS.SRI.P.SAMSUDIN
SRI.K.C.ANTONY MATHEW
SRI.JITHIN LUKOSE**

RESPONDENT/COMPLAINANT:

**STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM- 682031**

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25-09-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

CRL.M.C.NO.6345/2015

APPENDIX

PETITIONERS' EXHIBITS

**ANNEXURE A1 COPY OF THE FIR IN CRIME NO. 477/2015 OF NILAMBUR
POLICE STATION**

RESPONDENT'S EXHIBITS

NIL

TRUE COPY

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.6345 of 2015

Dated this the 23rd day of September, 2015

O R D E R

The petitioners herein are the accused in Crime No.476/2015 of the Nilambur Police Station, involving certain offences including the one under Section 3(1)(x) of The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'SC/ST Act'). The petitioners now want to surrender before the learned Magistrate having jurisdiction, but they apprehend that they will be remanded to judicial custody. In such a situation, they seek a direction to the learned Magistrate to consider and decide their application for bail on the date of surrender itself. Of course, it is true that pre-arrest bail is barred under Section 18 of the SC/ST Act. But it is well settled that the learned Magistrate having jurisdiction can entertain and decide application for bail under Section 437 Cr.P.C., on surrender or on arrest. The learned Magistrate will have to examine the whole case records and take judicious decision in the matter of bail. The learned Magistrate shall have in mind, the possibility of misuse of the provisions of the SC/ST Act. The

learned Magistrate can examine the case records and see whether the very essentials of the said offence are there in the complaint. To become punishable, the said offence must have been committed in public view, and must have been committed with the clear intention of abusing a member of scheduled caste or scheduled tribe on the said ground. Any way, let appropriate decision regarding bail be taken by the learned Magistrate. It is for the petitioners to opt to surrender before the learned Magistrate or before the investigating officer. In any case they can make application for bail under Section 437 Cr.P.C.

In the result, this petition is disposed of, with a direction to the court below that in case application for bail is filed by the petitioners on surrender or on arrest in Crime No.476/2015 of the Nilambur Police Station, the same shall be judiciously and appropriately considered and decided on the date of application itself, however with notice to the other side.

Sd/-

P. UBAID, JUDGE

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