IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

WEDNESDAY, THE 22ND DAY OF JULY 2020 / 31ST ASHADHA, 1942

Bail Appl..No.3302 OF 2020

CRIME NO.1134/2020 OF Perumbavoor Police Station , Ernakulam

PETITIONER/A8:

PRADEEP R.S @ HARI PALOD
AGED 43 YEARS
S/O. RAVEENDRAN NAIR, ROHINI PLAVARA HOUSE, PALODE, NANNIYODE P.O., NEDUMANGAD , THIRUVANANTHAPURAM-695 562

BY ADV. SRI.VISHNUPRASAD NAIR

RESPONDENTS/STATE & COMPLAINANT:

1 **STATE OF KERALA**
REPRESENTED BY THE PUBLIC PROSECUTOR , HIGH COURT OF KERALA, ERNAKULAM-682 031

2 **SUB INSPECTOR OF POLICE**
PERUMBAVOOR POLICE STATION, ERNAKULAM DISTRICT-683 542

R1-2 BY ADDL.DIRECTOR GENERAL OF PROSECUTION

OTHER PRESENT:

SRI.C.K .SURESH, SR PP

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 14.7.2020 ALONG WITH Bail Appl..3563/2020 AND Bail Appl..3959/2020, THE COURT ON 22.07.2020, PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

WEDNESDAY, THE 22ND DAY OF JULY 2020 / 31ST ASHADHA, 1942

Bail Appl..No.3563 OF 2020

AGAINST THE ORDER/JUDGMENT IN CRMC 1129/2020 DATED 05-06-2020 OF DISTRICT COURT & SESSIONS COURT, ERNAKULAM

CRIME NO.1134/2020 OF Perumbavoor Police Station , Ernakulam

PETITIONER/A12:

ANANDHU SANTHOSH, AGED 21 YEARS
S/O. SANTHOSH KUMAR P.R, PUTHIYEDATHU HOUSE,
KEEZHILLAM KARA, KEEZHILLAM P.O, RAYAMANGALAM
VILLAGE, PERUMBAVOOR, ERNAKULAM 683541

BY ADV. SRI.R.DIVAKARAN

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY THE STATION HOUSE OFFICER,
PERUMBAVOOR POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI.C.K.SURESH, SR.PP

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 14.07.2020, ALONG WITH Bail Appl..3302/2020 AND Bail Appl..3959/2020 THE COURT ON 22.07.2020 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

WEDNESDAY, THE 22ND DAY OF JULY 2020 / 31ST ASHADHA, 1942

Bail Appl..No.3959 OF 2020

AGAINST THE ORDER/JUDGMENT IN CRMC 1156/2020 DATED 10-06-2020 OF DISTRICT COURT & SESSIONS COURT, ERNAKULAM

CRIME NO.1134/2020 OF Perumbavoor Police Station , Ernakulam

PETITIONER/ACCUSED:

RAHUL K.R.
AGED 21 YEARS
S/O.RAJAN, KULAKKATTUKUDY HOUSE, KEEZHILLAM
P.O., PERUMBAVOOR, ERNAKULAM, PIN - 683 541.

BY ADV. SRI.AJEESH M UMMER

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.
682031

R1 BY ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI.C.K.SURESH, SR.PP

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 22.07.2020, ALONG WITH Bail Appl..3302/2020, AND Bail Appl..3563/2020, THE COURT ON 22.07.2020 PASSED THE FOLLOWING:

COMMON ORDER

B.A.No.3302/2020, B.A.No.3959/2020 and B.A.No.3563/2020

[Dated, this the 22nd day of July, 2020]

Applications filed under Section 438 Cr.P.C for anticipatory bail.

2. The applicants in B.A.Nos.3302/2020, 3959/2020 and 3563/2020 are the 8th, 11th and 12th accused, respectively, in Crime No.1134/2020 of Perumbavoor Police station, for having allegedly committed offences punishable under sections 120B, 143, 144, 147, 148, 153-A, 454, 380 and 427 read with Section 149 of the Indian Penal Code, Section 5 of Kerala Prevention of Destruction to Private Property and Payment of Compensation Act, and Section 4 (2), (d) and (f) of Kerala Epidemic Diseases Ordinance, 2020.

3. The prosecution case in brief is thus:- The accused in the aforesaid crime, including the petitioners, hatched a conspiracy to demolish a

film set constructed at Kalady riverside, depicting a Church, and formed an unlawful assembly on 24.05.2020, committed riot armed with deadly weapons, broke into the structure, committed theft from inside the structure and mischief by destroying it, causing a loss to the tune of Rs.80 lakhs to the film producer and damaged the walls of the sanctum sanctorum of the Kalady Mahadeva Temple causing a loss of Rs.25,000/- thereby promoting enmity, hatred or ill-will between different groups on the grounds of Religion. On the basis of a complaint lodged by the Secretary of Maha Sivaratri Committee of Kalady Mahadeva Temple, the crime was registered

4. Accused No. 8 contends that he is innocent and was not even present at the scene of occurrence. He is the State General Secretary of a political organisation named Antharastra Hindu Parishad (A.H.P). The 1st accused is the District

President of the said Organisation. The allegation against him is that he had published a post on his Facebook page after the aforesaid incident admitting his role in the act of demolition by the members of his organisation and justified it. His act indicates that he was part of the conspiracy in consequence of which the unlawful assembly consisting of the other accused perpetrated the crime. It is stated that the film shooting set was an illegally constructed structure on the banks of Periyar river, and his organisation had filed a complaint before the Panchayat to take necessary steps to remove the same. Despite the complaint, no action was taken by the Panchayat.

5. The 11th accused states that he is innocent and has got nothing to do with the alleged incident and has been implicated without any basis. He has no criminal antecedents. He is willing to co-operate with the investigation.

6. The 12th accused claims to be a boy aged 21 who has completed his course in ITI and is presently engaged in laying of interlock bricks. He had on 24.05.2020 gone to Kalady to buy pork along with his friend Rahul and on seeing a crowd gathering at the riverbed, he went to there and inadvertently got embroiled in the crime. He has no criminal antecedents and has no allegiance to any political organisation. He has been falsely implicated in the crime and seeks indulgence from this Court for a pre-arrest bail.

7. Learned Public Prosecutor, Sri.C.K.Suresh, has vehement objections about granting of pre-arrest bail to the accused. It is submitted by him that for the last 75 years Sivaratri is being celebrated at the banks of river Periyar adjoining the Kalady Mahadeva Temple, which is being managed by the Mahasivaratri committee. All festivals in connection with the temple are being held in the

place. When the production unit of a film approached the Committee for construction of a film set, the Committee readily agreed and it is with their permission that the temporary structure was put up. It was agreed by the production unit that soon after the film shooting is over, the structure would be pulled down. Huge amount of money was spent for construction of the temporary structure. Valuable items like generator etc. were also kept inside the said structure. Antharashtra Hindu Parishad (A.H.P) and its subsidiary Bhajrang Dal under the leadership of the 8th accused hatched a conspiracy to pull down the structure solely because it depicted a Church and they could not digest the structure depicting a Church [even though it was temporary in nature] occupying the precincts of Mahadeva temple. The 8th accused has incited the local sympathisers of Bhajrang Dal which includes the other accused, in particular accused 1 and 2, and those persons having very

serious criminal antecedents took initiative with the other accused and demolished the structure.

8. It is pointed out by the learned Prosecutor that Section 153-A Part-I would definitely be attracted because the intention was to create disharmony among religious groups. The learned counsel appearing for the applicants would contend that no objection whatsoever has been raised by the Christians of the locality or anywhere else regarding grievance about demolition of the structure depicting a Church. It is pointed out that it is not a Church but only a replica of a Church. The learned Prosecutor would question that if it was only a structure having resemblance of a Church and not a genuine Church, why should the accused be aggrieved about such a structure standing there for a brief period till the shooting is over. Hence, the intention was poisoning the minds of Hindus of the locality against the

Christians stating that a Church or something resembling a Church has come up in the precincts of Mahadeva temple, which may probably be permanently snatched away by the members of the other religion. That is how the provisions under Section 153-A is attracted in this case. Taking advantage of the lock-down situation, the applicants and the other accused thrown all the preventive measures during the pandemic, barged into the structure, stole away valuable articles from inside and demolished the entire structure. The learned Public Prosecutor has also pointed out the post in the Facebook page of the 8th accused, copy of which has been produced by the 8th accused in which there is a clear indication given by the 8th accused that his organisation had warned them [Committee members and production unit] when such a structure was built up in the precincts of Mahadeva temple and they ignored that warning and hence it was pulled up. He expressed his happiness over the said act of his

followers and congratulated all those who participated in this act of mischief, the first accused Melattur Rethish, the Ernakulam Division President of Rashtriya Bhajrang Dal, in particular. This post, according to the learned Public Prosecutor, is clearly intended at inciting the religious feelings of Hindus against Christians.

9. The 8th accused has in the bail application contended that the film set was illegally constructed on the riverbanks which is a property exclusively in the possession of the Government of Kerala and the Kalady and Okal Grama Panchayats. The members of the A.H.P had filed a complaint as Annexure A1 before the Panchayat Secretary, Kalady Grama Panchayat stating that the construction of a Church for the purpose of film shooting at the Kalady Sivaratri riverbank is brought to their knowledge. Such activities on the riverbank used for celebration of Sivaratri for the last 72 years

would hurt the feelings of Hindu believers and amounts to an affront and challenge to them. The film set constructed at the Sivaratri riverbank has therefore to be removed and has requested action to be taken by the Panchayat in that regard. The 8th accused states that in spite of the aforesaid complaint by the A.H.P, no action was taken by the Panchayat. Information was thereafter sought from the Grama Panchayat under the Right to Information Act as per Annexure-A2 as to whether sanction has been obtained from the Panchayat for film shooting and construction of Church film set in the Sivaratri riverbank. Annexure-A3 reply was provided by the Panchayat stating that no such permission was obtained for shooting of a film or for constructing a film set of a Church. It is stated that without ascertaining the veracity of the complaint filed by the Secretary of Maha Sivaratri festival committee, who has facilitated illegal encroachment and construction of a film set on

revenue property, a crime was registered. It is further stated that offence under Section 454 IPC is also not attracted because, the film set is not a dwelling house or place of worship. It is stated that the Secretary of the festival committee has no locus standi to file such a complaint. It is further submitted that the Facebook post of the 8th accused does not in any way promote enmity between different groups on the grounds of religion, as pointed out by the learned Prosecutor. No other religion is even referred to by the 8th accused. It is further submitted that none of the Christians have raised any objection about demolition.

10. The recitals in the bail application filed by the accused, indirectly amounts to an admission regarding the grievance that the A.H.P had about the construction of the film set and the film shooting at the precincts of the Mahadeva Temple. It is therefore a justification about destruction

of the film set by the members of A.H.P. Added to that, the Facebook post of the 8th accused justifies and congratulates the act of demolition. No other proof is required to establish conspiracy led by the 8th accused, submits the learned Prosecutor.

11. Though prolix discussion regarding the maintainability of offences under Sections 153-A and 454 I.P.C is uncalled for in an application for bail, I do have my own doubts about the commission of offence under Section 153-A I.P.C, for reasons which I will elucidate.

12. To attract an offence of lurking house trespass or housebreaking punishable under Section 454 of the I.P.C, the prosecution will have to prove that there was housebreaking or house trespass as defined under Sections 442 and 445 of the I.P.C. The argument of the learned counsel appearing for the accused persons herein is that the film set is not a house or a place of worship.

"House-trespass" is defined under Section 442 I.P.C as thus:-

> "House- trespass:-Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as human dwelling or any building used as a place of worship, or as a place for the custody of property, is set to commit "house-trespass"."

A reading of the aforesaid provision and in particular the expression "in building used as a place for custody of property", I am of the view that a film set, though a temporary structure, was being used as a place for custody of property like generator, etc; which was allegedly stolen. Since the definition also includes a tent, and does not state that it should be a permanent structure, even a temporary film set would fall within the definition of a house which in this case, can be said to be a structure used for custody of property. Hence, I have no doubts about Section 454 getting attracted in this case.

13. Coming to Section 153-A, the essential

ingredient to attract the offence is promoting feeling of enmity, hatred or ill-will between different religious or racial or linguistic or regional groups or castes or communities.(emphasis supplied) S.153-A covers a case where a person by "words, either spoken or written, or by signs or by visible representations" promotes or attempts to promote such feeling. Merely inciting the feelings of one community or group without any reference to any other community or group cannot attract the offence (See ***Bilal Ahmed Kaloo v. State of A.P, 1997 KHC 1044 : 1997 (7) SCC 431 : 1997 SCC (Cri) 1094 : AIR 1997 SC 3483 : 1997 CriLJ 4091***). The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the *sine qua non* of the offence under S. 153A IPC (See ***Manzar Sayeed Khan v. State of Maharashtra, 2007 KHC 3326 : AIR 2007 SC 2074 : JT 2007 (5) SC 335 : 2007***

(5) SCC 1 : 2007 CriLJ 2959 : 2007 (2) SCC (Cri) 417).

14. The essence of the offence under S.153A IPC is promoting enmity between different groups on grounds of religion, race, place of birth, residence etc. and doing acts prejudicial to maintenance of harmony. Real intention to incite one group or community against another is absolutely essential. It is necessary that at least two groups or communities should be involved. Merely inciting the feelings of one community or group without any reference to any other community or group cannot attract the provisions of S.153A IPC.

15. In the case in hand, the comments made by the 8th accused in the Facebook is only with regard to the pride of A.H.P, or at best the Hindu community. The comments made by him refers only to the the Mahadeva temple and not permitting such

activities of construction within the precincts of the temple. Therefore, *prima facie*, the offence punishable under S.153-A is not attracted to the facts of the case. (See also ***Bijumon v. State of Kerala 2018 (4) KHC 73.***) At best, the Facebook post would amount to an admission regarding the involvement of the 1st accused as the President of the Ernakulam Division of Bajrang Dal and his supporters.

16. The fact that the 1st accused has 28 criminal cases against him and that accused of 4 and 7 are also involved in criminal cases may not militate against accused 8, 11 and 12 from claiming a pre-arrest bail. Section 380 I.P.C is the only offence that attracts punishment up to 7 years of imprisonment. Offence under Section 454 IPC attracts a punishment of up to 3 years imprisonment, Section 153-A attracts punishment of between 3 to 5 years and Section 427 would attract

punishment of only up to 2 years imprisonment. The main perpetrators of the crime like accused 1, 2, 4 and 7 have already been arrested. The applicants in these applications admittedly do not have any criminal antecedents. I find no reason to hold that the applicants may not co-operate with the investigation. Custodial interrogation of the applicants may not be necessary. Hence, I find that the applicants are all entitled to anticipatory bail.

17. In the result, the Bail Applications are allowed and the applicants are directed to surrender before the investigating officer within two weeks and after interrogation in the event of their being arrested, they shall be released on bail on execution a bond for Rs.50,000/- (Rupees fifty thousand only) each with two solvent sureties each for a like amount to the satisfaction of the investigating officer and on following further

conditions:-

(1) They shall not get involved in similar crimes during the bail period.

(2) They shall appear before the investigating officer as and when called for and co-operate with the investigation.

(3) They shall not tamper with evidence, influence or intimidate witnesses.

Breach of the bail conditions shall entail in cancellation of the bail on an application being filed by the prosecution before the jurisdictional Court.

Sd/-

ASHOK MENON
JUDGE

jg