IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 12TH DAY OF FEBRUARY 2024 / 23RD MAGHA, 1945

BAIL APPL. NO. 897 OF 2024

CRIME NO.32/2024 OF Ochira Police Station, Kollam

PETITIONER/S:

JERIN
AGED 23 YEARS
S/O. SHEEJA, KANNANKARA KIZHAKKATHIL, KUTHIRAPANTHY, THAZHAVA, KARUNAGAPPALLY TALUK, KOLLAM DISTRICT, PIN - 690523

BY ADV K.RAKESH

RESPONDENT/S:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM DISTRICT, PIN - 682031

2 THE STATION HOUSE OFFICER
OCHIRA POLICE STATION, KOLLAM DISTRICT, PIN - 690526

OTHER PRESENT:

SR PP SMT NEEMA T V

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O R D E R

The application is filed under Section 438 of the Code of Criminal Procedure, 1973 *('Code', for short),* for an order of pre-arrest bail.

2. The petitioner is the 2nd accused in Crime No.32/2024 of the Ochira Police Station, Kollam, registered against the accused (six in number) for allegedly committing the offences punishable under Sections 341, 323, 324, 308, 143, 145, 147, 148 and 149 of the Indian Penal Code, 1860, *('IPC', for short).*

3. The gist of the prosecution case is that: the accused in prosecution of their common intention on 08.01.2024 at around 4.45 p.m., wrongfully restrained the defacto complainant and his friend, who were passing on a motor cycle, and using a rock piece, the 1st accused assaulted the defacto complainant and his friend and the 2nd accused hit them with a stem of a plantain bunch, and caused injuries to the defacto complainant and his friend. Thus, the accused have

committed the above offences.

4. Heard; Sri. K.Rakesh, the learned counsel appearing for the petitioner and Smt.Neema T.V. the learned Senior Public Prosecutor.

5. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations leveled against him. Even if the allegation in Annexure A FIR are taken on its face value, it would not constitute an offence under Section 308 of the IPC. The specific overt act is alleged against the 1st accused. Therefore, the petitioner is entitled to an order of pre-arrest bail. The petitioner's custodial interrogation is not necessary and recovery has been effected. Hence, the application may be allowed.

6. The learned Public Prosecutor opposed the application. She contended that both the defacto complainant and his friend have suffered injuries. She made available the accident register cum wound certificate dated 08.01.2024 issued by the Karunagappilly District Hospital, which shows that the

injured named Jesil had suffered a hematoma on the post auricular region and on the left hand side of the temporal region. Similarly, the other injured named Vaisakh had suffered abrasions on the right side of the temporal region. She contended that the petitioner's custodial interrogation is necessary and recovery is to be effected. If the petitioner is let off on bail, it would hamper with the investigation. Hence, the application may be dismissed.

7. In ***Siddharam Satlingappa Mhetre v. State of Maharashtra*** *[(2011) 1 SCC 694]* the Hon'ble Supreme Court has held as follows:

> ***111.*** *No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event,*

this is the legislative mandate which we are bound to respect and honour.

***112**. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail: (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness

> *that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.*
>
> ***126**. We deem it appropriate to reiterate and assert that discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.*

8. In ***Jai Prakash Singh v. State of Bihar and another,*** *[(2012) 4 SCC 379],* the Hon'ble Supreme Court has held that, an order of pre-arrest bail being an extra ordinary privilege, should be granted only in exceptional cases. The judicial discretion conferred upon the Courts has to be properly exercised, after proper application of mind, to decide whether it is a fit case to grant an order of pre-arrest bail. The court has to be prima facie satisfied that the applicant has been falsely enroped in the crime and his liberty is being misused.

9. On an anxious consideration of the facts, the materials placed on record, the rival submissions made across the Bar, especially after perusing the accident register cum wound certificate of the two injured dated 08.01.2024, which shows that both the injured had suffered injuries in the incident and that there is a specific overt act alleged against the petitioner, I am of the definite view that the petitioner has not made out any exceptional grounds to invoke the extra ordinary jurisdiction of this Court under Sec.438 of the Code, especially when his custodial interrogation and recovery has to be effected. Therefore, I hold that this is not a fit case to grant an order of pre-arrest bail. Consequently, the bail application is dismissed.

Nonetheless, I direct that, if the petitioner surrenders before the Investigating Officer within 10 days from today, he shall be interrogated and, thereafter, be produced before the jurisdictional Court on the date of surrender itself. Then, if the petitioner moves an application for bail, the jurisdictional Court shall,

untrammelled by any observations in this order, consider the bail application on its merits and as expeditiously as possible. If the petitioner does not surrender before the Investigating Officer as directed above, the Investigating Officer shall be free to arrest the petitioner as if no order has been passed in this case.

Sd/-

C.S.DIAS,JUDGE

Rkc/12.02.24

APPENDIX OF BAIL APPL. 897/2024

PETITIONER ANNEXURES

Annexure A	A TRUE COPY OF THE FIR IN CRIME NO.32/2024 OF THE OCHIRA POLICE STATION DATED 9-1-2024