IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

FRIDAY, THE 26TH DAY OF JULY 2024 / 4TH SRAVANA, 1946

BAIL APPL. NO. 4236 OF 2024

CRIME NO.6/2024 OF KATTOOR POLICE STATION, THRISSUR

PETITIONER/FIRST ACCUSED:

ARUN,
AGED 30 YEARS
S/O ANILAN, PUTHUVEETTIL HOUSE,
KARALAM DESOM, KARALAM VILLAGE ,
MUKUNDAPURAM TALUK,
THRISSUR DISTRICT, PIN - 680711
BY ADV M.J.POLLY

RESPONDENT/RESPONDENT:

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

BY SMT NEEMA T V
SENIOR PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Dated this the 26th day of July, 2024

O R D E R

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

2. The petitioner is the first accused in Crime No.06/2024 of the Kattoor Police Station, Thrissur, registered against the accused for allegedly committing the offences under Sections 143, 147, 148, 341, 323, 324 and 308 r/w Section 149 of the Indian Penal Code.

3. The gist of the prosecution case is that; on 01.01.2024, at about 1.00 hours, the accused, in prosecution of their common intention and out of their previous animosity with the injured, formed themselves into an unlawful assembly armed with an iron pipe and a sword, and the first accused brandished the sword on the first informant's neck, who suffered grave injury on the left side of his head, the second accused hit the first informant on his right knee with the iron pipe and the

other accused kicked the friends of the first informant and caused injuries to them. Thus, the accused have committed the above offences.

4. Heard Sri. Polly. M. J, learned counsel appearing for the petitioner and Smt. Neema T.V. the learned Senior Public Prosecutor appearing for the respondent.

5. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. There is no material to substantiate that the petitioner has committed the above offences. The Investigating Officer has deliberately incorporated the said offences to deny bail to the petitioner. The petitioner's custodial interrogation is not necessary, and no recovery is to be effected. Hence, the application may be allowed.

6. The learned Public Prosecutor seriously opposed the application. She submitted that there are incriminating materials to substantiate the petitioner’s

involvement in the crime. She drew attention of this Court to Annexure A2 order, wherein this Court has entered a specific finding that it was the first accused who inflicted serious injuries on the left side of the head of the defacto complainant. The petitioner's custodial interrogation is necessary, and recovery is to be effected. If the petitioner is granted an order of pre-arrest bail, he would torpedo the investigation. Hence, the application may be dismissed.

7. On an evaluation of the materials on record, it can be seen that the specific overt act is alleged against the petitioner, who brandished the sword on the defacto complainant's neck and inflicted a grave injury on the left side of his head. The said fact stands prima facie corroborated by the treatment record of the defacto complainant produced before this Court. However, these are matters to be investigated and ultimately decided at the time of trial.

8. In **Srikant Upadhyay v. State of Bihar** [2024

KHC OnLine 6137] the Honourable Supreme Court, after referring to all the earlier decisions on the point, has observed in the following lines:

> "8. It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under S.438, CrPC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in HDFC Bank Ltd. v. J.J.Mannan & Anr., 2010 (1) SCC 679).
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> 24. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious

> cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. xxx xxx xxx".

9. 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.

10. On an anxious consideration of the facts, the rival submissions made across the Bar and the materials placed on record, particularly on considering the fact that there are prima facie materials to substantiate the

petitioner's involvement in the crime, that the petitioner's custodial interrogation is necessary, and that the recovery is to be effected, I am not satisfied that the petitioner has made out any valid ground to invoke the discretionary jurisdiction of this Court under Section 438 of the Code. Hence, I hold that this is not a fit case to grant an order of pre-arrest bail.

Resultantly, the bail application is dismissed.

Sd/-

C.S.DIAS,JUDGE

mtk/26.07.24