2024:KER:59968

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE C.S.DIAS
WEDNESDAY, THE 7TH DAY OF AUGUST 2024 / 16TH SRAVANA, 1946
BAIL APPL. NO. 4835 OF 2024
CRIME NO.311/2024 OF Thankamani Police Station, Idukki
AGAINST THE ORDER/JUDGMENT DATED IN CRMC NO.438 OF 2024 OF DISTRICT COURT & SESSIONS COURT,THODUPUZHA
PETITIONER/S:

1 **HARIPRASAD S NAIR,**
AGED 28 YEARS
S/O SIVAPRASAD,VEVAKARATTU HOUSE, ERATTAYAR VILLAGE,UDUMBANCHOLA TALUK. IDUKKI DISTRICT -, PIN - 685554

2 **REJI THOMAS,**
AGED 54 YEARS
S/O THOMAS,ELIPULIKATT HOUSE,ERATTAYAR VILLAGE,UDUMBANCHOLA TALUK,IDUKKI DISTRICT, PIN - 685554

3 **JIJI JOSEPH,**
AGED 50 YEARS
S/O JOSEPH,PANTHALLARU PARAMBIL HOUSE,ERATTAYAR VILLAGE,UDUMBANCHOLA TALUK,IDUKKI DISTRICT -, PIN - 685554

4 **SURESH K UTHAMAN,**
AGED 38 YEARS
S/O UTHAMAN,KARIPOTT HOUSE,ERATTAYAR VILLAGE,UDUMBANCHOLA TALUK,IDUKKI DISTRICT, PIN - 685554

5 **JIBIN JOSEPH,**
AGED 29 YEARS
S/O JOSEPH THOMAS,KANDATHIL HOUSE,IDINJAMALA P O,ERATTAYAR VILLAGE,UDUMBANCHOLA TALUK,IDUKKI DISTRICT –, PIN - 685554

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
PRERITH PHILIP JOSEPH
ANILKUMAR C.R.
K.S.KIRAN KRISHNAN

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RESPONDENT/S:

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

2 **STATION HOUSE OFFICER,**
THANKAMANI POLICE STATION, (CRIME NO. 311/2024 OF THANKAMANI POLICE STATION, IDUKKI DISTRICT -, PIN - 685515

BY ADVS.
PUBLIC PROSECUTOR
ADDL.DIRECTOR GENERAL OF PROSECUTION

OTHER PRESENT:

ADGP SRI GRASHIOUS KURIAKOSE ,SR PP SRI C K SURESH

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.S.DIAS,J

Bail Application No.4835 of 2024

Dated this the 7th day of August, 2024

ORDER

The application is filed under Section 438 of the Code of Criminal Procedure, 1973 (in short, 'Code'), by the accused in Crime No.311/2024 of the Thankamani Police Station, Idukki, which is registered against the accused for allegedly committing the offences punishable under Sections 353, 332, 225, 201 and 506 r/w Section 34 of the Indian Penal Code (in short, 'IPC') and Section 15(c) of the Kerala Abkari Act 1 of 1077 .

2. The gist of the prosecution case is that: on 21.05.2024, at around 22:20 hours, the accused, in furtherance of their common intention, were making preparations to consume alcohol in a waiting shed. At that time, the defacto complainant/S.I. of Police of Thanakamni Police Station and his party were doing patrolling duty. On seeing the accused preparing to have alcohol, they went to the scene of occurrence. Then, the 1st accused pushed on

the chest of the defacto complainant and hit his head on the back of the jeep and he suffered hurt. The 2nd accused threatened to beat the defacto complainant and his party, and then pushed the defacto complainant on his chest, and he and the other accused took away the 1st accused from the place of occurrence. Thus, they obstructed the defacto complainant and his party from discharging their official duties. They also destroyed the material object used to commit the offence. Thus, the accused have committed the above offences.

3. Heard; Sri.S.Rajeev, the learned counsel appearing for the petitioners and Sri.C.K.Suresh, the learned Special Public Prosecutor.

4. The learned counsel for the petitioners submitted that the petitioners are innocent of the accusations leveled against them. They have been falsely implicated in the crime. The Investigating Officer using his power and influence has incorporated Sections 353 and 332 to see that the petitioners are denied bail. There

is no material to establish that the petitioners have used force against the defacto complainant and his party, and interdicted them from discharging their duties. The petitioners are law abiding citizens without any criminal antecedents. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the application. He submitted that the petitioners 1 to 3 are the accused 1, 2 and 5. the petitioners 4 and 5 are not accused in the crime. The specific overt act is alleged against the 1st accused, who hit the defacto complainant's head on the back of the jeep and he suffered an injury. He made available the treatment records of the defacto complainant dated 22.05.2024 issued by the Government Medical College Hospital, Idukki, to substantiate that the defacto complainant suffered injuries on his head. He stated that the 1st accused' s custodial interrogation is necessary and recovery is to be effected for the proper and full investigation of the crime. If the 1st accused is granted an order of pre-arrest bail, it would certainly hamper the investigation. Hence, the application may be dismissed.

Nonetheless, he did not dispute the fact that there are no specific allegations against the accused 2 and 5 who only took away the 1st accused from the scene of occurrence and obstructed the defacto complainant from discharging his duties.

6. On an evaluation of the materials on record, it can be deciphered that the specific overt act is alleged against 1st accused, who hit the defacto complainant on his chest and hit his head on the back of the jeep. The said allegation prima facie stands corroborated by the treatment records referred to above. However, there is no specific overt act alleged against the accused 2 and 5 so as to attract the offences under Sections 353 and 332 of the IPC, although that is a matter to be investigated and decided at the time of trial.

7. On an over all consideration of the facts, rival submissions made across the Bar and the materials placed on record, particularly the treatment records of the injured and on finding that the specific overt act is alleged against the 1st accused, I am not satisfied that the 1st

accused has made out any valid ground to invoke the discretionary jurisdiction of this Court under Section 438 of the Code. Hence, I hold that the 1st accused is not entitled to an order of pre arrest bail. On the contrary, since there is no specific overt act alleged against the accused 2 and 5, I am satisfied that they have made valid grounds to invoke extra ordinary jurisdiction of this Court. Similarly, since the petitioners 4 and 5 are no longer accused, their application is only to be dismissed as unwarranted.

In the result;

(1) The application filed by the 1st accused/1st petitioner is dismissed.

Nonetheless, I direct that, if the petitioner surrenders before the Investigating Officer within seven 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, consider the bail application on its merits. 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.

(2) The application filed by the petitioners 4 and 5 is dismissed as unwarranted.

(3) The application filed by the accused 2 and 5/ petitioners 2 and 3 is allowed subject to the following conditions:

(i) The accused 2 and 5/ petitioners 2 and 3 are directed to surrender before the Investigating Officer within 10 days from today.

(ii) In the event of the arrest of the accused 2 and 5/ petitioners 2 and 3, the Investigating Officer shall release the accused 2 and 5/ petitioners 2 and 3 on bail on them executing a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties for the like amount each;

(iii) The accused 2 and 5/ petitioners 2 and 3 shall appear before the Investigating Officer for interrogation, as and when directed by the

Investigating Officer.

(iv) The accused 2 and 5/ petitioners 2 and 3 shall not directly or indirectly make any inducement, threat or procure to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;

(v) The accused 2 and 5/ petitioners 2 and 3 shall surrender their passports before the jurisdictional court concerned within a period of one week from the date of their release on bail. If they have no passport, they shall file affidavits to the effect before said court within the said period;

(vi) The accused 2 and 5/ petitioners 2 and 3 shall not get involved in any other offence while on bail;

(vii) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on



the same, in accordance with law.

(viii) Applications for deletion/modification of the bail conditions shall also be filed before the court below.

(ix) Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the accused 2 and 5/ petitioners 2 and 3 even while they are on bail as laid down by the Hon'ble Supreme Court in ***Sushila Aggarwal v. State (NCT of Delhi) And another*** *[2020 (1) KHC 663].*

(x) The observations made in this order are only for the purpose of considering the application and the same shall not be construed as an expression on the merits of the case to be decided by competent Courts.

Sd/-

C.S.DIAS,JUDGE

rkc/07.08.24

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APPENDIX OF BAIL APPL. 4835/2024

PETITIONER ANNEXURES

Annexure I	**A COPY OF THE FIR & FIS IN CRIME NO 311 / 2024 OF THANKAMANI POLICE STATION DATED 22.05.2024**
Annexure II	**A COPY OF THE ORDER DATED 04.06.2024 IN CRL MC NO 438/2024. 451/2024. 454/2024**