**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE C.S.DIAS**

**WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946**

**BAIL APPL. NO. 5146 OF 2024**

**CRIME NO.378/2024 OF MEENANGADI POLICE STATION, WAYANAD**

**PETITIONER/ACCUSED:**

**VARGHESE P C**
**AGED 72 YEARS**
**C/O.THOMAS CHACKO, PEEDIKAYIL, MEENANGADI POST, PURAKKADI, WAYANAD, KERALA, PIN - 673591**

**BY ADVS.**
**SRI.BASIL CHANDY VAVACHAN**
**SMT.CHARUTHA BHAIJU**
**SRI.BASIL SAJAN**
**SMT.FATHIM NAVAS**
**SMT.KAVYA P.R.**
**SMT.LEKSHMI PRIYA V.**
**SRI.BASIL SCARIA**
**SRI.GEORGIE SIMON**

**RESPONDENT:**

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

**BY SR.PP SMT.NEEMA T V**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**C.S.DIAS,J**

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**Bail Application No. 5146 of 2024**

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Dated this the 24th day of July, 2024

**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 accused in Crime No. 378/2024 of the Meenangadi Police Station, Wayanad, which is registered against him, for allegedly committing the offences punishable under Sections 308, 324 and 526 of the Indian Penal Code, 1860 (for short, ‘IPC’).

3. The essence of the prosecution case is that; on 02.06.2024, at around 11.30 hours, the accused, due to his previous animosity towards the defacto complainant, hit the defacto complainant with a hammer on his forehead

and inflicted serious injuries. It is only because the defacto complainant had warded off the point of attack, he did not lose his life. Thus, the accused has committed the above offences.

4. Heard; Sri.Basil Chandy Vavachan, the learned counsel appearing for the petitioner and Smt.Neema T.V, the learned Public Prosecutor.

5. The learned counsel appearing for the petitioner strenuously argued that the offence under Section 308 IPC has been deliberately incorporated by the Investigating Officer to see that the petitioner is incarcerated. He relied on the decision of the Hon'ble Supreme Court in **Roop Chand @ Lala vs. State (NCT) of Delhi** [Criminal Appeal No.2204 of 2010] to fortify his contention that unless there is a material to substantiate that the accused had assaulted the defacto complainant with an intention to cause death, the offence under Section 308 IPC cannot be attributed. He stated that the petitioner is a 72 years old man and there are several disputes between the parties. A reading of Annexure 4 wound certificate would show that the

defacto complainant had not suffered any serious injuries as alleged by the prosecution. The recovery has already been effected. Therefore, the petitioner's custodial interrogation is not necessary. The petitioner is ready to abide by any stringent conditions that may be imposed by this Court. Hence, the application may be allowed.

6. The learned Public Prosecutor seriously opposed the application. She submitted that the investigation is in progress. She also drew the attention of this Court to Annexure 4 wound certificate and contended that the defacto complainant had suffered a deep lacerated wound of 2x1 cm over the upper part of the right eye and also had a sutured wound and was advised higher centre consultancy. The petitioner with the intention to cause culpable homicide had hit the defacto complainant with the hammer. It is only due to the sheer providence that the defacto complainant did not lose his life. The petitioner's custodial interrogation is necessary and recovery is to be effected. Hence, the application may be dismissed.

7. The allegation against the petitioner is that, he assaulted the defacto complainant with a hammer by hitting him on his head and it is only because he evaded the attack he did not lose his life. Prima facie, the accusation is found to be true on going through the corresponding injuries seen in Annexure 4 treatment records. However, that is a matter to be investigated and decided at the time of the trial.

8. The petitioner had filed a similar application before the Court of Session**,** Wayanad, which was dismissed by Annexure 5 order, wherein the learned Sessions Judge has considered the matter in detail, after going through the Case Diary. This Court has also found that there are incriminating materials to establish the petitioner's involvement in the crime and prima facie that the offence under Section 308 IPC is attracted to the facts of the case.

9. In **Srikant Upadhyay v. State of Bihar** [2024 KHC OnLine 6137], the Hon'ble Supreme Court, after referring to the earlier precedents on the point, has succinctly laid down the law 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)."

"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.

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xxx”

10. 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.

11. After bestowing my anxious consideration to the facts, rival submissions made across the Bar and the materials placed on record, and particularly on considering the nature, seriousness and gravity of the accusations levelled against the petitioner, that there are prima facie materials to substantiate the petitioner’s involvement in the crime, that the petitioner’s custodial interrogation is necessary, I am not satisfied that the petitioner has made

out any valid ground to invoke the extraordinary jurisdiction of this Court under Sec.438 of the Code. Hence, 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 one week 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.

Sd/-

**C.S.DIAS, JUDGE**

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