IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 25TH DAY OF JULY 2024 / 3RD SRAVANA, 1946

BAIL APPL. NO. 5842 OF 2024

CRIME NO.562/2024 OF PARAPPANGADI POLICE STATION, MALAPPURAM AGAINST THE ORDER DATED 09.07.2024 IN CRMC NO.852 OF 2024 OF DISTRICT COURT& SESSIONS COURT,MANJERI

PETITIONER/ACCUSED NO.3:

MUHAMMED RIYAS O.A.
AGED 36 YEARS
S/O. ABDUL ASEEZ, ODATHOTTIL HOUSE,
KUTTIPARA P.O., THAMARASHERI,
MALAPPURAM DISTRICT, PIN - 679322

BY ADV K.RAKESH

RESPONDENTS/STATE/COMPLAINANT:

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

2 **THE STATION HOUSE OFFICER**
PARAPPANANGADI POLICE STATION,
MALAPPURAM DISTRICT, PIN - 676319

BY SMT SEETHA S
SENIOR PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Dated this the 25th day of July, 2024

O R D E R

The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the third accused in Crime No. 562/2024 of the Parappanangadi Police Station, Malappuram, which is registered against the accused for allegedly committing the offences punishable under Sections 363 and 307 r/w 34 of the Indian Penal Code (in short, 'the IPC') and Sections 27(1) and 25(3) of the Arms Act. Subsequently, Section 120(B) of the IPC was incorporated. The petitioner was arrested and remanded to judicial custody on 26.05.2024.

2. The essence of the prosecution case is that: on 19.05.2024, at around 19.00 hours, the accused, in furtherance of their common intention, had hatched a conspiracy, and formed themselves into an unlawful assembly armed with deadly weapons, intercepted the

vehicle of the defacto complainant, and then, they smashed the windscreen of the vehicle and intimidated the defacto complainant by pointing a gun at him. Thereafter, they hacked the defacto complainant's friend with a sword and abducted one of his friends. Thus, the accused have committed the above offences.

3. Heard; Sri. K. Rakesh., the learned counsel appearing for the petitioner and Smt. Seetha.S, the learned Special Public Prosecutor.

4. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. The Investigating Officer has deliberately incorporated Sections 307 and 363 of the the IPC to see that the petitioner is incarcerated. The petitioner is a person without any criminal antecedents. The petitioner has been in judicial custody for the last 59 days, the investigation in this case is practically complete, and recovery has been effected. Therefore, the petitioner may be enlarged on bail.

5. The learned Public Prosecutor opposed the application. She submitted that the petitioner is the kingpin in the alleged crime. The petitioner has committed a very heinous offence by abducting one of the friends of the defacto complainant and also causing serious injuries to them. She stated that if the petitioner is enlarged on bail, there is every likelihood of him intimidating the witnesses and tampering with the evidence. Hence, the application may be dismissed.

6. The prosecution allegation is that the petitioner, along with the other accused, had hatched a conspiracy and, in furtherance of their common intention, had assaulted the defacto complainant and his friends and caused injuries to them. It is also alleged that they also damaged the vehicle of the defacto complainant. The fact remains that the petitioner has been in judicial custody for the last 59 days, the investigation in the case is practically complete, and the recovery has been effected. Apparently, the petitioner

does not have any criminal antecedents.

7. In **Sanjay Chandra v. CBI,** [2012 1 SCC 40], the Honourable Supreme Court has categorically held that the fundamental postulate of criminal jurisprudence is the presumption of innocence, until a person is found guilty. Any imprisonment prior to conviction is to be considered as punitive and it would be improper on the part of the Court to refuse bail solely on the ground of former conduct.

8. In **Dataram Singh v. State of U.P**., [(2018) 3 SCC 22] the Honourable Supreme Court observed that grant of bail is the rule and putting a person in jail is an exception. Even though the grant of bail is entirely the discretion of the court, it has to be evaluated based on the facts and circumstances of each case and the discretion has to be exercised in a judicious and compassionate manner.

9. The principle that bail is the rule and jail is an exception is on the touch stone of Article 21 of the

Constitution of India. Once the charge sheet is filed, a strong case has to be made out for continuing a person in judicial custody. The right to bail cannot be denied merely due to the sentiments of the society.

10. On an overall consideration of the facts, the rival submissions made across the Bar, and the materials placed on record, and particularly considering the fact that the petitioner has been in judicial custody for the last 59 days, the investigation in the case is practically complete, recovery has been effected, and furthermore, the petitioner does not have any criminal antecedents, I am of the firm view that the petitioner's further detention is unnecessary. Hence, I am inclined to allow the bail application.

In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum, to the

satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

(i) The petitioner shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is laid. He shall also appear before the Investigating Officer as and when required;

(ii) The petitioner 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 him from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;

(iii) The petitioner shall not commit any offence while he is on bail;

(iv) The petitioner shall surrender his passport, if any, before the court below at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the court below on the date of execution of the bond;

(v) 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.

(vi) Applications for deletion/modification of the bail conditions shall be moved and entertained by the court below.

(vii) 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 petitioner even while the petitioner is 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].**

Sd/-

mtk/25.07.2024. **C.S.DIAS, JUDGE**