IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946

BAIL APPL. NO. 6181 OF 2024

CRIME NO.815/2024 OF Perinthalmanna Police Station, Malappuram

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PETITIONERS/ACCUSED 1, 2, 4 AND 5 :-

1 HASSAN, AGED 55 YEARS
MUAHMMED, KIZHISSERY HOUSE, NELLIPPARAMBU,
MATTARAKKAL POST, NELLIPPARAMBU, MATTARAKKAL POST,
MALAPPURAM, PIN - 679 322

2 ABOOBACKER SIDHEEQUE, AGED 44 YEARS
S/O VEERAN, KARANKODAN HOUSE, NELLIPPARAMBU,
MALAPPURAM, PIN - 679 322

3 MUHAMMED NOUFAL, AGED 26 YEARS
S/O ALAVI, NANBULLI HOUSE NELLIPPARAMBU,
MALAPPURAM, PIN - 679 322

4 ISMAIL, AGED 38 YEARS
S/O MUHAMMED, PORUPPAN HOUSE, MATTARAKKAL POST,
ARAKKUPRAMBU, MALAPPURAM, PIN - 679 322

BY ADVS.
LAL K.JOSEPH
P.MURALEEDHARAN (THURAVOOR)
T.A.LUXY
SURESH SUKUMAR
ANZIL SALIM
SANJAY SELLEN

RESPONDENTS :-

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 031

**2 THE STATION HOUSE OFFICER
PERINTHALMANNA POLICE STATION, PERINTHALMANNA,
MALAPPURAM, PIN - 679 322**

**BY ADVS.
SRI.GRASHIOUS KURIAKOSE, ADGP
SRI.C.K.SURESH, SR.PP**

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

O R D E R

Dated this the 31st day of July, 2024

This is the second application filed under Section 439 of the Code of Criminal Procedure, 1973, by the accused 1, 2, 4 and 5 in Crime No.815/2024 of the Perinthalmanna Police Station, Malappuram, which is registered against the accused, for allegedly committing the offences punishable under Sections 143, 147 and 302 r/w Section 149 of the Indian Penal Code. The accused 1, 2 and 5 were arrested and remanded to judicial custody on 30.04.2024 and the fourth accused was arrested and remanded to judicial custody on 02.05.2024.

2. The gravamen of the prosecution case is that; on 28.04.2024, at around 20:45 hours, the accused, in prosecution of their common intention, formed themselves into an unlawful assembly and they pulled out one Nisamudheen (deceased) from the shop of one Muhammed Musthafa and they brutally attacked him with weapons.

The deceased suffered grievous injuries, and succumbed to the same night at 22:30 hours. Thus, the accused have committed the above offences.

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

4. The learned counsel appearing for the petitioners submitted that the petitioners are totally innocent of the accusations levelled against them. They have been falsely implicated in the crime. There is no material to substantiate the petitioners' involvement in the case. In any given case, the accused 1, 2 and 5 have been in judicial custody since 30.04.2024 and the fourth accused has been in judicial custody since 02.05.2024, the investigation in the case is not complete and the final report has not been laid. Therefore, the petitioners are entitled to statutory bail as contemplated under Section

167(2) of the Cr.P.C. Therefore, the application may be allowed.

5. The learned Public Prosecutor seriously opposed the application. He submitted that the investigation is in progress. He also stated that if the petitioners are enlarged on bail, there is every likelihood of them tampering with the evidence and intimidating the witnesses. Nonetheless, he did not dispute the fact that the accused 1, 2 and 5 were arrested and remanded to judicial custody on 30.04.2024 and the fourth accused was arrested and remanded to judicial custody on 02.05.2024, the investigation in the case is not complete and the final report has not been laid even after the lapse of 90 days.

6. On an appreciation of the materials on record, it can be seen that the petitioners have been in judicial custody for more than 90 days. Indisputably, the investigation in the case is not complete and the final report has not been laid.

7. Subsections (1) and (2) of Section 167 of the Code of Criminal Procedure, 1973 reads as follows:-

> 167. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.
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> (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:
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> Provided that— 2 [(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—
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> (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
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> (ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section

> shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

8. A three-Judge Bench of the Honourable Supreme Court in **Uday Mohanlal Acharya** v. **State of Maharashtra** [(2001) 5 SCC 453], reiterated the legal proposition in **Sanjay Dutt** v. **State through C.B.I., Bombay** (supra). In paragraph 13 (3) it was opined thus:

> "13. x x x x x x (3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate."
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> (emphasis added)

9. In the instant case, as the petitioners have been in judicial custody for the last 90 days, the investigation in the case is not complete and the final report has not been laid, I am satisfied that the petitioners are entitled to be released on statutory bail since it is their indefeasible right under Section 167(2) of the Code. Hence, I allow the bail application.

In the result, the application is allowed, by directing the petitioners to be released on bail on them 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 petitioners shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is laid. They shall also appear before the Investigating Officer on every third Saturday till the conclusion of the trial in Crime No.815/2024;

(ii) The petitioners 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;

(iii) The petitioners shall not commit any offence while they are on bail;

(iv) The petitioners shall surrender their passports, if any, before the court below at the time of execution of the bond. If they have no passports, they shall file affidavits to the effect before the court below on the date of execution of the bond;

(v) The petitioners shall furnish their permanent and present addresses and mobile numbers to the Investigating Officer and file a memo before the jurisdictional court;

(vi) The petitioners shall not leave the territorial jurisdiction of the Court of Session, Manjeri without the previous permission of the jurisdictional court.

(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 be filed and entertained 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 petitioners even while the petitioners 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].

Sd/-
C.S. DIAS, JUDGE

Jvt/30.7.2024

APPENDIX OF BAIL APPL. 6181/2024

PETITIONER ANNEXURES :-

Annexure A1	**THE TRUE COPY OF THE F.I.R NO. 815 OF 2024 OF PERINTHALAMANNA POLICE STATION IS PRODUCED HEREWITH AS ANNEXURE A1**
Annexure A2	**THE TRUE COPY OF THE ORDER DATED 20.05.2024 IN CRL.M.C.668/2024 WAS FILED BEFORE THE HONOURABLE SESSION'S COURT, MANJERI IS PRODUCED HEREWITH AND MARKED AS ANNEXURE A2.**
Annexure A3	**THE E-COURT PROCEEDINGS DATED 15/6/2024 IS PRODUCED HEREWITH AS ANNEXURE A3 .**
Annexure A4	**THE TRUE COPY OF THE F.I.R BEARING NO.816/2024 OF PERINTHALAMANNA POLICE STATION REGISTERED AGAINST THE DECEASED IS PRODUCED HEREWITH AS ANNEXURE A4**
Annexure A5	**TRUE COPY OF THE COMMON ORDER DATED 04/07/2024 IN BA NO.5178/24 BEFORE THE HIGH COURT OF KERALA IS PRODUCED HEREWITH AS ANNEXURE A5**
Annexure 6	**ORDER DATED 04-07-2024 IN BAIL APPL.5178/2024 ON HIGH COURT**
Annexure 7	**ORDER DATED 04-07-2024 IN BAIL APPL.4362/2024 ON HIGH COURT**