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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. 6263 OF 2024
CRIME NO.493/2024 OF Erumapetty Police Station, Thrissur
AGAINST THE ORDER/JUDGMENT DATED IN CRMP NO.2898 OF 2024 OF JUDICIAL MAGISTRATE OF FIRST CLASS, VADAKKANCHERRY

PETITIONER/S:

MUHAMMED SHEREEF
AGED 38 YEARS
S/O. MUHAMMED, CHEERAM PARAMBIL HOUSE,
CHIRAMANENGAD, THRISSUR., PIN - 680604

BY ADVS.
VISHNU BHUVANENDRAN
B.ANUSREE
ASWIN NANDA A.
VARUN JACOB

RESPONDENT/S:

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

SR.PP.SMT..SEETHA S.

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.6263 of 2024

Dated this the 7th day of August, 2024

ORDER

The application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, “BNSS”), by the 1st accused in Crime No.493/2024 of the Erumapetty Police Station, Thrissur, which is registered against the accused for allegedly committing the offences punishable under Sections 498(A), 341, 323, 324 and 326 r/w Section 34 of the Indian Penal Code (in short, 'IPC). The petitioner was arrested and remanded to judicial custody on 06.07.2024.

2. The concise case of the prosecution is that: the 1st accused was married to the defacto complainant on 23.10.2013. During their period of co-habitation, the accused, in furtherance of their common intention, had mentally and physically harassed the defacto complainant demanding more dowry. The 1st accused was maintaining an out of the marriage relationship with other women. On

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21.06.2024, at around 20:45 hours, the accused caught hold of the defacto complainant and assaulted her. The 2nd accused wrongfully restrained her and the 1st accused hit her with a lock on her head. Then, the accused 3 and 4 struck the defacto complainant on her face with stone and she suffered an injury on her face. Thus, the accused have committed the above offences.

3. Heard; Sri.Vishnu Bhuvanendran, the learned counsel appearing for the petitioner and Smt.Seetha S. the learned Senior Public Prosecutor.

4. The learned counsel for the petitioner submitted that the petitioner is innocent of the accusations leveled against him. He has been falsely implicated in the crime. The Investigating Officer has deliberately incorporated Sections 326 and 498A against the accused, without any cogent material. A reading of the First Information Report would show that the specific overt act is alleged against the 4th accused, who has allegedly struck the defacto complainant with a stone, and he suffered a grievous

injury. The petitioner has been in judicial custody for the last one month, the investigation in the case is complete and recovery has been effected. The petitioner does not have any criminal antecedents. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the application. She submitted that the investigation is in progress. She also stated that the defacto complainant has suffered a broken tooth, which was the reason to incorporate Section 326 of the IPC. If the petitioner is released on bail, there is every likelihood of him intimidating the victim and witnesses, and tampering with the evidence. Hence, the application may be dismissed.

6. The prosecution case against the petitioner is that, he assaulted the defacto complainant by hitting her with a lock on her head and also mentally and physically harassing her demanding more dowry. The fact remains that the petitioner has been judicial custody for the last nearly one month, the investigation in the case is

complete, recovery has been effected and the petitioner does not have any criminal antecedents.

7. In ***Dataram Singh v. State of U.P.,*** *[(2018) 3 SCC 22]* the Honourable Supreme Court observed that grant of bail is a 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.

8.In ***State of Kerala v. Raneef,*** *[(2011) 1 SCC 784]*, the Honourable Supreme Court has declared that undertrial prisoners detained in jail for indefinite periods, without any sufficient reason or due to the delay in concluding the trial, will tantamount to infringement of their right to life guaranteed under Article 21 of the Constitution.

9. In ***Hussainara Khatoon (I) v. Home Secy., State of Bihar*** *[(1980) 1 SCC 81]*, the Honourable Supreme Court while dealing with a case of under trials, who suffered long incarceration, held that the procedure that keeps large number of people behind the bars without trial for long is unreasonable and unfair, and is not in conformity with the mandate of Article 21 of the Constitution of India.

10. 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.

11. After bestowing my anxious consideration of the facts, the rival submissions made across the Bar, and the materials placed on record, particularly considering the fact that the petitioner has been in judicial custody for the last 30 days, the investigation in the case is complete

and the final report has been laid, I am of the firm view that the petitioner's further detention is unnecessary. Hence, I am inclined to allow the bail application, but subject to stringent conditions.

In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.1,00,000/- (Rupees one lakh 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 alternate Saturday between 9 a.m. and 11 a.m till the conclusion of the trial in Crime No. 493/2024.

(ii) The petitioner shall not directly or indirectly make any inducement or threat to the victim or her witnesses or 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;

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(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) The petitioner shall not enter the Taluk where the victim and the witnesses are residing till the conclusion of the trial in Crime No.493/2024, other than for the purpose of reporting before the Investigating Officer;

(vi) 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.

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

(viii) 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].*

(ix) 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

APPENDIX OF BAIL APPL. 6263/2024

PETITIONER ANNEXURES

Annexure-I	**TRUE COPY OF THE FIR DATED 23.06.2024 IN CRIME NO. 493/2024 OF ERUMAPETTY POLICE STATION, THRISSUR.**
Annexure-II	**TRUE COPY OF THE FIR DATED 01.12.2016 IN CRIME NO. 3336/2016 OF KUNNAMKULAM POLICE STATION, THRISSUR.**
Annexure-III	**TRUE COPY OF THE CASE STATUS IN CC NO. 1427/2018 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KUNNAMKULAM OBTAINED FROM E-COURT SERVICES WEBSITE.**
Annexure-IV	**TRUE COPY OF THE ORDER DATED 17.07.2024 IN CMP NO. 2898/2024 OF THE HONOURABLE JUDICIAL FIRST CLASS MAGISTRATE COURT, VADAKKANCHERY.**