IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

CRL.A NO. 627 OF 2025

CRIME NO.1492/2024 OF TANUR POLICE STATION, MALAPPURAM AGAINST THE ORDER DATED 04.03.2025 IN CRL.MP NO.152 OF 2025 OF SPECIAL COURT FOR SC/ST (POA) ACT & NDPS ACT CASES, MANJERI

APPELLANTS/PETITIONERS/ACCUSED 1 AND 2:

1 ABDUL KAREEM
AGED 44 YEARS
S/O MOHAMMED, KADUVAKKANCHERI, KARINGAPPARA,
PONMUNDAM, MALAPPURAM, KERALA, PIN - 676106

2 MOHAMMED ASHIK
AGED 30 YEARS
C/O.ABOOBACKER, THALAPPIL HOUS THARAYIL,
THENNALA P.O., MALAPPURAM, PIN - 676508

BY ADV V.HARIKRISHNAN

RESPONDENTS/RESPONDENTS/STATE-DE FACTO COMPLAINANT:

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

2 SHIJILA
AGED 35 YEARS, W/O.RANJITH KLARIPALLIYALIL HOUSE
KARINGAPPARA, ADRISSERY P.O.
MALAPPURAM - 676106

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 10.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.S.SUDHA, J.

Criminal Appeal No.627 of 2025

Dated this the 10th day of April 2025

J U D G M E N T

This appeal under Section 14A of the Scheduled Castes & the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Act) has been filed by the petitioners/accused in crime no.1492/2024 of Tanur police station, Malappuram, aggrieved by the dismissal of his petition under Section 482 Bharatiya Nagarik Suraksha Sanhita, 2023 (the BNSS), namely, Crl.M.P.No.152/2025, on the file of the Court of Session, Manjeri, seeking pre-arrest bail.

2. It is submitted by the learned counsel for the appellants/A1 and A2 that there is a counter case, that is Annexure 3 FIR in which the husband of the second respondent, the victim herein, is the accused. The offences committed in the said crime

includes the offence under Section 110 of Bharatiya Nyaya Sanhita, 2023 (the BNS) also. The materials on record will not make out an offence(s) under the Act. Hence the trial court erred in finding that the bar under Sections 18 and 18(A) of the Act is attracted.

3. The request for pre-arrest bail is opposed by the learned Public Prosecutor. It is submitted by the learned Public Prosecutor on instructions that the investigation revealed that no offence under Section 3(1)(s) of the Act is made out. However, the offence under Section 3(2)(va) of the Act is made out and hence the bar under Sections 18 and 18(A) of the Act is attracted. Therefore, the trial court was right in holding so and dismissing the application. There is no infirmity calling for an interference by this Court, argues the Prosecutor.

4. Heard both sides.

5. Apparently from the materials now placed before me, there is a counter case, that is Annexure 3 FIR in which the husband

of the second respondent herein is alleged to have *inter alia* committed the offence under Section 110 BNS. From the materials it is seen that there is some disputes between the parties relating to the parking of vehicles, resulting in the case and counter case. In the light of the dictums in **Hitesh Verma v. State of Uttarakhand, 2020 KHC 6631: (2020) 10 SCC 710** and **Khuman Singh v. State of Madhya Pradesh, 2019 KHC 6858: AIR 2019 SC 4030**, it is doubtful whether the offence under Section 3(2)(va) of the Act would be made out, as a reading of the FIS it shows that the incident took place pursuant to the dispute relating to parking of vehicles. Therefore *prima facie* it is doubtful as to whether an offence under Section 3(2)(va) of the Act would be made out. However, the investigating officer is at liberty to bring in all materials to establish that any offence(s) under the Act is made out. In these circumstances, I find that the appellants are entitled to pre-arrest bail.

In the result, the appeal is allowed and the appellants/accused are granted pre-arrest bail on the following conditions:-

i) The appellants/accused in the event of their arrest shall be released on bail on execution of a bond to the satisfaction of the officer concerned.

ii) The appellants/accused shall co-operate with the investigation and appear before the investigating officer as and when directed.

iii) They shall not leave the country without the prior permission of the trial Court.

iv) They shall surrender their passports to the jurisdictional court. If the appellants do not have passports, they shall file an affidavit to the said effect before the jurisdictional court within seven days of their release on bail.

v) The appellants/accused shall not directly or

indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer.

Interlocutory applications, if any pending, shall stand closed.

Sd/-

C.S.SUDHA
JUDGE

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APPENDIX OF CRL.A 627/2025

PETITIONER ANNEXURES

Annexure 1	**THE TRUE COPY OF THE FIRST INFORMATION REPORT CRIME BEARING NUMBER NO. 1492/2024 OF TANUR POLICE STTION, MALAPPURAM DATED 9.12.2024**
Annexure 2	**THE TRUE COPY OF THE FIRST INFORMATION STATEMENT**
Annexure 3	**THE TRUE COPY OF FIR IN TANUR POLICE STATION CRIME 1494/2024**