IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

FRIDAY, THE 5TH DAY OF JULY 2024 / 14TH ASHADHA, 1946

BAIL APPL. NO. 4760 OF 2024

CRIME NO.14/2024 OF BINANIPURAM POLICE STATION, ERNAKULAM

AGAINST THE ORDER DATED 26.03.2024 IN Crl.MC NO.883 OF 2024 OF THE COURT OF SESSION, ERNAKULAM

PETITIONERS/ACCUSED NOS.1 TO4:

1 BINCY SURESH, AGED 43 YEARS
W/O.SURESH, PUTHUVELIL HOUSE, KAVALKULAM KARA,
ELAPPARA.P.O., IDUKKI DISTRICT, PIN - 685501

2 K.V.RAJESH, AGED 45 YEARS
S/O. VIKRAMAN, KOVATTU HOUSE, THURUTH, ALUVA.P.O.,
ERNAKULAM DISTRICT,, PIN - 683101

3 BINDHU KURIAN, AGED 48 YEARS
D/O. KURIAN, KAITHOTTUNGAL HOUSE, KARUMALLOOR P.O.,
MANAKKAPPADY, ERNAKULAM DISTRICT, PIN - 683511

4 SALY THANKACHAN, AGED 48 YEARS
W/O. THANKACHAN, THAZHAKKAL HOUSE, KAMAZHI P.O.,
PUSHPAGIRI, IDUKKI DISTRICT, PIN - 685515

BY ADVS. SRI.VINOD S. PILLAI
SRI.AHAMMAD SACHIN K.
SRI.JERRY PETER

RESPONDENT/COMPLAINANT:

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

BY SRI.C.S HRITHWIK, SR.PUBLIC PROSECUTOR
SRI.K.R.RANJITH, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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ORDER

Dated this the 05th day of July, 2024

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 petitioners are the accused 1 to 4 in Crime No.14 of 2024 of Binanipuram Police Station, Ernakulam, which is registered against them for allegedly committing the offences punishable under Sections 341, 324, 326 read with Section 34 of the Indian Penal code, 1860.

3. The gist of the prosecution case is that: on 05.11.2023, at around 15.00 hours, while the defacto complainant/victim, who is an HIV patient, was residing in a care home of the accused, they tied her to the window and beat her with a wooden log, and she suffered multiple fractures. Thus, the accused

have committed the above offences.

4. Heard; Sri.Vinod S Pillai, the learned counsel appearing for the petitioners and Sri.C.S Hrithwik and Sri.K.R.Ranjith, the learned Public Prosecutors.

5. The learned counsel for the petitioners submitted that the petitioners are innocent of the accusations levelled against them. They have been falsely implicated into the crime. The victim is an HIV patient and has very low immunity level. She is also suffering from Osteoporosis. It is due to her affliction that her bones are brittle, and she has suffered the fractures. The petitioners have not assaulted the victim as alleged by the prosecution. In fact, the petitioners were convalescing the victim for quite some time. The victim has certain mental abrasions and it was the petitioners who informed about her mental condition to the Mental Health Centre. The petitioners are law abiding citizens without any

criminal antecedents. The petitioners' custodial interrogation is not necessary and no recovery is to be effected. Hence, the application may be allowed.

6. The learned Public Prosecutors seriously opposed the application. They submitted that there are incriminating materials to substantiate that the petitioners had tied the victim to the window of their care home and then brutally assaulted her and the victim suffered multiple fractures. They made available the discharge certificate issued by the Government Medical College Hospital, Thrissur, which shows that the victim has suffered five fractures. The Investigating Officer has learnt that the petitioners are treating their inmates in a very inhuman manner. The petitioners' custodial interrogation is necessary and recovery is to be effected for the proper and full investigation of the crime. If the petitioners are granted an order of pre-arrest bail, it would certainly hamper the

investigation. Hence, the application may be dismissed.

7. The prosecution allegation is that the accused had tied the victim to the window of their care home and then brutally assaulted her with wooden logs and she suffered multiple fractures. The said allegation prima facie stands corroborated by the medical records that have been handed over to this Court, although that is a matter to be investigated and decided at the time of trial.

8. When the application came up for consideration on 26.06.2024, taking into consideration the submission made by the learned counsel for the petitioners that the victim is suffering from Osteoporosis and that her bones are brittle, which has led to the fractures, this Court directed the Government Medical College Hospital, Thrissur to examine the victim and file a report in the said regard.

9. Pursuant to the said order, the Investigating Officer had taken the victim to the Head of the Department Orthopedics, Government Medical College Hospital, Thrissur and subjected her to examination. The Doctor, in his statement dated 03.07.2024, has reported that the victim has suffered the fractures due to the assault and not due to any affliction. The Consultant Psychiatrist of the Government Mental Health Centre also has reported that the victim has stated that she was brutally assaulted by the petitioners/accused.

10. The petitioners had filed a similar application before the Court of Session, Ernakulam. By Annexure A2 order, the learned Sessions Judge has concluded that the materials establish the petitioners involvement in the crime. Consequently, their application was dismissed.

11. Recently, in ***Srikant Upadhyay v. State of***

Bihar [2024 KHC OnLine 6137] the Honourable Supreme Court, after referring to all the earlier decisions on the point, has observed 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).
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> 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. xxx xxx"

12. 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.

13. On an over all consideration of the facts, the rival submissions made across the Bar and the materials placed on record, and especially on

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comprehending the nature, seriousness and gravity of the accusations levelled against the petitioners, the prima facie materials that establish the petitioners' involvement in the crime, that the petitioners custodial interrogation is necessary and recovery is to be effected, I am not satisfied that the petitioners have made out any valid ground to invoke the extraordinary jurisdiction of this Court under Sec.438 of the Code. Hence, I am not inclined to allow this application. The application is dismissed.

Sd/-

C.S.DIAS
JUDGE

NAB