
(2023) 03 KL CK 0072
In the High Court Of Kerala
Case No : Bail Application No. 961 Of 2023

Abdul Aziz

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 08-03-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 153A

Citation : (2023) 03 KL CK 0072

Hon'ble Judges : Dr Kauser Edappagath, J

Bench : Single Bench

Advocate : K.K.Sethukumar, S.Rekha

Final Decision : Dismissed

Judgement

Dr Kauser Edappagath, J

1. This application is filed u/s 438 of the Code of Criminal Procedure seeking pre-arrest bail.
2. The applicant is the accused in Crime No.1858/2022 of Adoor Police Station. The offence alleged is punishable under Section 153A of IPC.
3. The prosecution case, in short, is that the applicant posted a voice message through WhatsApp group of the members of his mosque, urging the members not to celebrate X'mas and not to sell materials for celebrating X'mas with an intention to create enmity between different religions and against the maintenance of harmony between the people who are living in the area and thereby committed the above said offence.
4. I have heard Sri.K.K.Sethukumar, the learned counsel for the applicant and Smt.S.Rekha, the learned Senior Public Prosecutor. Perused the case diary.
5. The learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the present case. The counsel further

submitted that no materials are on record to connect the applicant with the alleged crime; hence, he is entitled to get bail. The learned Public Prosecutor, on the other hand, submitted that the alleged incident occurred as a part of the intentional criminal acts of the applicant, and if he is released on bail at this stage, it will affect the course of the investigation.

6. The law regarding the grant or refusal of pre-arrest bail is well settled. Pre-arrest bail cannot be granted as a matter of course. The power u/s 438 of Cr.P.C could be exercised only when a special case is made out, that too, recording reasons thereof. Perusal of the case diary reveals that the accusation made against the applicant is very serious in nature and it prima facie shows a premeditated criminal act on his part. The learned Public Prosecutor made available to me a pendrive, which contains the speech of the applicant. Prima facie it attracts the ingredients of Section 153 A of IPC.

The investigation is in a preliminary stage. The custodial interrogation of the applicant is necessary for the investigation. As rightly argued by the learned Public Prosecutor, the possibility of the applicant influencing the witnesses and interfering with the investigation cannot be ruled out if he is released on bail. Considering the gravity of the offence and stage of the investigation, it is not a fit case where extra ordinary jurisdiction vested with this Court u/s 438 of Cr.P.C. could be invoked. The bail application is, accordingly, dismissed