
(2011) 08 KL CK 0044
In the High Court Of Kerala
Case No : B.A. No. 5865 of 2011

Ajinees, K.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 308

Citation : (2011) 4 ILR (Ker) 96 : (2011) 4 KLJ 92

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : T.V. Jayakumar Namboodiri, for the Appellant; V. Tekchand (Public Prosecutor), for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice K.T. Sankaran

1. This is an application for anticipatory bail u/s 438 of the Code of Criminal Procedure. The Petitioner is accused No. 2 in Crime No. 558 of 2011 of Kenner Town Police Station.

2. The offences alleged against the petitioner are under Sections 143, 147, 148, 341, 324 and 308 read with 149 of the Indian Penal Code.

3. The prosecution case is the following:

The de facto complainant, who is a BBM student, while traveling in a car with his brother, father and others to the new bus stand Thavakkara, Kenner, they stopped the car near a mosque waiting for his friend. At that time, about 10 persons came on bikes and shouted at the de facto complainant as to whether he did not know that it was a hartal day and they questioned him as to how he could take a vehicle on that day. The accused persons caught hold of the de facto complainant and he was beaten by them. When attacked with an iron rod on his head, the de facto complainant evaded and he sustained injuries on his left

eyebrow. The de facto complainant was admitted in the hospital. When the defacto complainant was caught hold of and attacked by the accused, all others in the car ran away. When the assailants left the place, they came back and took the de facto complainant to hospital.

4. The allegation levelled against the petitioner and other accused are very grave in nature. The accused may have a theory that if a political party declares hartal on a particular day, no person is entitled to take vehicles on road. Based on that view, the offence was committed and the de facto complainant was beaten black and blue. The freedom of movement of a citizen cannot be denied by a group of persons, whatever may be their political ideology and whatever may be the reason for the hartal. The offence was committed not on account of quarrel between two persons or groups of persons, but only on the ground that the political party to which the assailants belong had declared hartal on the day. The de facto complainant is not bound by the decision of any political party. As a citizen, he is free to move, to travel and to do whatever that is lawful to him. That right cannot be denied by any political party. I am not inclined to exercise any discretion in favor of the accused in the present case. Persons who are not interested in honouring the constitutional rights of fellow citizens, are not entitled to aspire for any discretionary relief u/s 438 of the Code of Criminal Procedure. If anticipatory bail is granted to the petitioners, it would adversely affect the proper and smooth investigation of the case.

For the aforesaid reasons, the Bail Application is dismissed.