
(2024) 03 KL CK 0227
In the High Court Of Kerala
Case No : Bail Application No. 697 Of 2024

Alikutty Kalleri

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 27-03-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 34, 308, 332, 353
Prevention of Damage to Public Property, 1984 — Section 3(1)

Citation : (2024) 03 KL CK 0227

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : K.K.Dheerendrakrishnan, M.Promodh Kumar, N.P.Asha, Neema T V

Final Decision : Allowed

Judgement

C.S.Dias, J

1. The application is filed under Section 438 of the Code of Criminal Procedure, 1973, for an order of pre-arrest bail.
2. The petitioner is the second accused in Crime No.771/2023 of Thalapuzha Police Station, Wayanad, registered against the accused (three in number), for allegedly committing the offences punishable under Sections 353, 332 & 308 read with Section 34 of the Indian Penal Code, 1860(in short, 'IPC') and 3(1) of the Prevention of Damage to Public Property, 1984 (in short, 'PDPP Act'),
3. The gist of the prosecution allegation is that: on 23.11.2023, at around 04.00 hours, while the forest officials were conducting vehicle checking, near the Periya 35th mile, on the basis of a secret information, they attempted to stop the vehicle bearing No.KL-72-D-3880, which was coming from Chandanathode side. The vehicle without stopping at the spot, hit the forest officials and their vehicle. The vehicle belongs to the first accused, who is the son of the second accused. The accused caused injuries to two forest officials, damaged their motorcycles,

and caused a loss of Rs.10,000/- to the Department. Thus, the accused have committed the above offences.

4. Heard: Sri. K.K. Dheerendrakrishnan, the learned counsel appearing for the petitioner and Smt. Neema T.V., the learned Public Prosecutor appearing for the respondent.

5. The learned counsel for the petitioner vehemently argued that the petitioner was not named in the First Information Report [FIR]. A reading of Annexure-I FIR would substantiate that, it was the first accused who was driving the vehicle. The prosecution allegation is that, even though the forest officials attempted to stop the vehicle in which the accused were travelling, the driver of the vehicle – the first accused – did not stop the vehicle; instead he hit the forest officials with the car and they sustained injuries. The Department vehicle was also damaged. Therefore, by no stretch of imagination can the second accused/petitioner be implicated as an accused in the crime. Initially, Annexure-I FIR was only registered against the first accused, who also recorded as an unknown person. It is subsequently, out of the previous animosity of the forest officials towards the petitioner, he has been implicated as an accused. The petitioner has not committed the offences alleged in Annexure-I FIR. A perusal of the seizure mahazar prepared by the forest officials would show the falsity in the crime. Even if the allegations in Annexure-I FIR are taken on its face value, none of the offences will stand attracted against the petitioner. The petitioner is totally innocent of the accusations levelled against him. He is prepared to co-operate with the investigation. His custodial interrogation is not necessary, and no recovery is to be effected. Hence, the petitioner may be granted an order of pre-arrest bail.

6. The learned Public Prosecutor assiduously opposed the application. She submitted that the petitioner, along with the other accused, with a common intention to obstruct the forest officials from discharging their duty and to commit their murder, had deliberately made the first accused hit on the forest officials and their vehicles. The accused had shot a deer with a gun, removed its antlers, and were travelling with carcass in the vehicle. This was the reason why they did not stop the vehicle. The forest officials heard the gun shot and also got secret information of the crime committed by the accused. The forest officials have also registered occurrence report No.4/2023 of Varayal Forest Station against the accused. The petitioner's custodial interrogation is necessary, and recovery is to be effected. There are incriminating materials to show the petitioner's involvement in the crime. Even though the accused Nos.1 to 3 had moved the Court of Session, Kalpetta, the learned Sessions Judge, by Annexure-II order, had dismissed their application on the specific finding that the petitioner's custodial interrogation was necessary and recovery was to be effected. There is no change of circumstances after the passing of Annexure-II, warranting the petitioner to move the present application before this Court. The application is a sheer abuse of the process of law. Considering the nature and

gravity of the accusations levelled against the petitioner, the application only deserves to be dismissed. Hence, the application may be dismissed.

7. The specific prosecution allegation in the present crime is that, on 22.11.2023, at 4.00 hours, the forest officials got secret information that the accused had hunted a spotted deer. Accordingly, the forest officials blocked the Thalassery – Bavelli road, at Periya 34 and started checking all the vehicles. When the officials attempted to stop the vehicle bearing No.KL-72-D-3880, the driver of the vehicle, without stopping the vehicle, hit two forest officials and a vehicle, causing injuries to the officials and damaging the vehicle causing a loss of Rs.10,000/- to the Department.

8. On a careful scrutiny of Annexure-I FIR and the materials placed on record, it is quite evident that the accusation is levelled against the driver of the vehicle. The prosecution has a specific case that it was the first accused who drove the vehicle. The offences that are registered against the accused are under Sections 353, 332 & 308 read with Section 34 of the IPC and Section 3(1) of the PDPP Act. It is only because the first accused refused to stop the vehicle and then hit the vehicle against the forest officials and their vehicle that the above offences were committed. There is no specific allegation against the petitioner. Therefore, I am of the prima-facie opinion that the offences alleged under Sections 353, 332 & 308 of the IPC, as well as Section 3(1) of the PDPP Act, may not be attracted against the petitioner. Thus, I hold that the petitioner's custodial interrogation is not necessary and no recovery is to be effected. Hence, I am satisfied that the petitioner is entitled to an order of pre-arrest bail.

In the result, the application is allowed subject to the following conditions:

(i) The petitioner is directed to surrender before the Investigating Officer within one week from today.

(ii) In the event of the petitioner's arrest, the Investigating Officer shall produce him before the jurisdictional court on the date of surrender itself.

(iii) On such production, the jurisdictional court shall release the petitioner on bail on him executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties for the like amount each, to the satisfaction of the jurisdictional court;

(iv) The petitioner shall co-operate with the investigation and make himself available for interrogation and for the purpose of investigation as and when the Investigating Officer directs;

(v) The petitioner shall not intimidate witnesses or interfere with the investigation in any manner;

(vi) The petitioner shall not get involved in any other offence while he is on bail.

(vii) 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.

(viii) Applications for deletion/modification of the bail conditions shall also be filed before the court below.

(ix) 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].

(x) Any observations made in this order is only for the purpose of deciding the application and the same shall not be construed as an expression on the merits of the case to be decided by the Courts.