

(2024) 11 KL CK 0123

In the High Court Of Kerala

Case No : Bail Application Nos. 2805, 4703 Of 2024

Baiju V K,S/o Unnikrishnan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 28-11-2024

Acts Referred:

Indian Penal Code, 1860 — Section 153A
Evidence Act, 1872 — Section 27

Citation : (2024) 11 KL CK 0123

Hon'ble Judges : C.Jayachandran, J

Bench : Single Bench

Advocate : Krishnadas P. Nair, K.L.Sreekala, Haridas P.Nair, M.A.Vinod, M.Rajesh Kumar, K.G.Manoj Kumar, Prasoon.K.P, Anu Prabhakar, Vishnu Prasad, Swathykrishna K., Abhirami P.S., Merlin Thomas, Anagha Ajith, S.Rekha

Final Decision : Allowed

Judgement

C.Jayachandran, J

1. These applications are preferred by accused nos.2 and 1 respectively in Crime No.130/2024 of the Vythiri Police Station, Wayanad, seeking pre-arrest bail.
2. The prosecution would allege that, on 22.03.2024 at 17.00 hours, a conversation was seen aired in Youtube with a title 'Jamitha Teacher Talks', the contents of which creates disharmony and feelings of enmity between religious groups and which suggests that the death of one Sidharth at the Veterinary University, Wayanad, was for dancing with a Muslim girl. The speaker also warns of a situation, as to what would have happened, if the boy who was put to death was a Muslim and the crime was perpetrated by members of another community. The accused persons, by their above conduct, have committed the offence under Section 153 A of the Penal Code, according to the prosecution.
3. When this matter was taken up for consideration today, the learned Senior Public Prosecutor would submit that the respondents have no objection in

granting pre-arrest bail to the petitioners, subject to their right – as envisaged in *Sushila Aggarwal and Others vs. State (NCT of Delhi) and Another* [(2020) 5 SCC 1] - to effect recovery by employing the concept of deemed custody. Learned Senior Public Prosecutor invited the attention of this Court to paragraph no. 85.7 and also to 92.8 of the judgment in *Sushila Aggarwal*(supra), in support of the above submission that grant of pre-arrest bail shall not stand in the way of the Investigating Officer to effect recovery in terms of Section 27 of the Evidence Act, by deeming the petitioner is to be in limited custody for that purpose.

4. To the above submission made by the learned Special Public Prosecutor, the petitioners have no objection.

5. In the circumstances, these bail applications for pre-arrest bail are allowed, subject to the following conditions:

(i) On the event of arrest of the petitioners, they shall be released on bail upon execution of a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties, each for the like sum, to the satisfaction of the jurisdictional court;

(ii) The petitioners shall appear before the Investigating Officer on every Saturdays at 10.00 a.m. for a period of four weeks for the purpose of interrogation and thereafter, as and when required by the Investigating Officer, in writing to do so;

(iii) The petitioners 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 from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;

(iv) The petitioners shall not commit any offence while they are on bail;

(v) The petitioner shall not leave the State, except with the express permission of the jurisdictional Court, in writing.

(vi) 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 is filed, and pass orders on the same in accordance with law;

(vii) Application for deletion/modification of the bail conditions shall be moved and entertained by the court below;

(viii) 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 petitioners, even while the petitioners are on bail, as laid down by the Hon'ble Supreme Court in *Sushila Aggarwal* (supra).