

(2023) 06 KL CK 0117

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petition No. 3365 Of 2023

Dr. P K Asokan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 09-06-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 308, 323, 325, 427, 506
Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012 — Section 3, 4

Citation : (2023) 06 KL CK 0117

Hon'ble Judges : Devan Ramachandran, J;Dr. Kauser Edappagath, J

Bench : Division Bench

Advocate : S.Rajeev, V.Vinay, Sarath K.P., M.S.Aneer, Prerith Philip Joseph, Anilkumar C.R., S.Kannan, A.Simi, A.Ranjith Narayanan, T.Shajith

Final Decision : Disposed Of

Judgement

Dr.Kauser Edappagath, J

1. This Cri.M.C has been filed to set aside the order granting bail to the accused Nos. 2 and 3 in Crime No.250/2023 of Nadakkavu Police Station, by the Sessions Court, Kozhikode (for short 'the court below').

2. The petitioner is a Cardiologist working at Fathima Hospital, Kozhikode. He is alleged to have been assaulted by the respondent Nos.2 and 3 along with other three persons on 04.03.2023. Consequently, the crime referred above was registered. The offences alleged are under Sections 323, 325, 308, 506, 427 read with 34 of IPC and Sections 3 & 4 of the Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012.

3. According to the prosecution, on 04.03.2023, six persons attacked the petitioner in the hospital due to an enmity relating to the death of a fetus. When Smt.Najas, wife of the respondent No.2, gave birth to still born child at a hospital

where the wife of the petitioner was a Gynecologist, due to the enmity, the respondent Nos. 2 and 3 along with others destroyed the glass of the hospital and assaulted the petitioner which caused fracture to his nasal bones.

4. The respondent Nos. 2 and 3 moved an application for Anticipatory Bail before the I Additional Sessions Court, Kozhikode, which was dismissed on 17.03.2023. Thereafter they surrendered at the court below on 20.03.2023. On the day of the surrender itself, the learned Sessions Judge granted bail to the respondent Nos. 2 and 3 as per Annexure III. The aforesaid order was impugned by the petitioner herein before this Court in CrI.M.C No.2446/2023 contending that grant of bail was without any application of mind and without considering the seriousness of allegations. This Court as per Annexure IV order set aside Annexure III order of the learned Sessions Judge and bail granted was cancelled. They were directed to surrender before the learned Sessions Judge. The learned Sessions Judge was directed to consider the Bail Application afresh and dispose of the same on merit. Thereafter, as directed, the respondent Nos. 2 and 3 surrendered before the learned Sessions Judge and the Bail Application was moved. On the date of surrender itself the bail was granted to respondent Nos. 2 and 3 by the learned Sessions Judge as per Annexure IX order. The said order is under challenge in this CrI.M.C.

5. We have heard Sri.S.Rajeev, the learned counsel appearing for the petitioner, Sri. A. Ranjith Narayanan, the learned counsel appearing for respondent Nos. 2 and 3 and Sri. S. Kannan, the learned Senior Government Pleader.

6. The learned counsel for the petitioner submitted that Annexure IX order was passed without considering the observations made by this Court under Annexure IV order and without taking into account the relevant materials on record. On the other hand, the learned counsel for respondent Nos. 2 and 3 submitted that the bail was granted by the learned Sessions Judge taking into account all relevant materials. The learned counsel further submitted that the investigations was over and final report has already been filed.

7. A glance of the impugned order reveals that the learned Sessions Judge totally ignored the observation made by this court in Annexure IV order. No finding has been recorded by the learned Sessions Judge regarding the overt acts, nature or seriousness of the allegations. It is a case where a Senior Cardiologist was brutally attacked by the respondent Nos. 2 and 3 along with three other persons causing a fracture to his nasal bone. We can take judicial notice of the fact that this kind of assault against the Doctors are on the rise in the State which even resulted in the unfortunate death of a young lady Doctor recently. The learned Sessions Judge failed to take note of the relevant factors which ought to have been taken into consideration while dealing with the application for bail in a case of this nature. Moreover, the learned Sessions Judge without any material made an unwarranted observation that the respondent Nos. 2 and 3 are victims of medical negligence. The learned Sessions Judge further noted that the petitioner was not in charge in the duty of a Gynecologist at the time of the offence. The

said fact is not at all a relevant consideration for granting bail. In short, the bail was granted on totally irrelevant considerations. Even the police custody sought, it was turned down without giving any valid reason. That apart, as rightly pointed out by the learned counsel for the petitioner, the bail was granted even without imposing any conditions. For these reasons, we hold that the impugned order is vitiated by perversity and it is only to be set aside.

8. Having found that the impugned order granting bail to the respondent Nos.2 and 3 cannot be sustained, the next course open is to remit the bail application to the learned Sessions Judge for fresh consideration. But, the said course would not serve any purpose inasmuch as the investigation is over and final report has already been filed. The case has already been committed to the committal court. It is submitted at the Bar that the Committal Court has already granted bail to respondent Nos.2 and 3 and the case stands posted to 12.06.2023 for committal.

In the light of the above findings, we dispose of this Crl.M.C. as follows:

- (i) Annexure IX order granting bail to respondent Nos. 2 and 3 is set aside.
- (ii) Since the regular bail has already been granted by the Committal Court to the respondent Nos. 2 and 3, they need not be offer fresh bail. However, on 12.06.2023, the learned Magistrate shall impose such conditions as he may deem fit.
- (iii) Needless to say, the Magistrate shall impose conditions, among other things, to ensure the presence of the respondent Nos. 2 and 3 during trial and also not to repeat any similar offence in future.
- (iv) The respondent Nos. 2 and 3 shall co-operate with the committal proceedings as well as the trial.