
(2023) 02 KL CK 0255
In the High Court Of Kerala
Case No : Bail Application No. 834 Of 2023

Jamshid. P.V

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 24-02-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 34, 120(b), 143, 147, 149, 294(b), 323, 326, 333, 341, 354, 364(A), 395
Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012 — Section 3, 4
Kerala Police Act, 2011 — Section 117, 118(e)

Citation : (2023) 02 KL CK 0255

Hon'ble Judges : A.Badharudeen, J

Bench : Single Bench

Advocate : J.R.Prem Navaz, Sumeen S., Muhammed Swadiq, P G Manu

Final Decision : Dismissed

Judgement

A.Badharudeen, J

1. This is an application for anticipatory bail filed under Section 438 of the Code of Criminal Procedure, by the petitioner who is arrayed as accused in Crime No.19 of 2023 of Chalissery Police Station, Palakkad where, he alleged to have committed offences punishable under Sections 341, 323 and 294(b) of the Indian Penal Code as well as under Sections 3 and 4 of the Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012.
2. Heard the learned counsel for the petitioner and also the learned Public Prosecutor.
3. I have perused the Case Diary materials produced by the learned Public Prosecutor.

4. The case of the prosecution is that, at about 18.50 hours on 08.01.2023, when the petitioner, who is a doctor by profession, was doing on-call duty, he had examined the wife of the accused aged 27 years at casualty attached to Star Med Family Clinic, Karukaputhoor. While so, the accused herein caught hold on his collar and slapped on his left cheek on the allegation that the defacto complainant touched on the body of the wife of the accused. On that premise, the prosecution alleges commission of the above offences.

5. While pursuing the relief of pre-arrest bail, the learned counsel for the petitioner pointed out that the petitioner is innocent. According to the learned counsel, the doctor misbehaved towards the wife of the accused and for which, complaint was lodged by the wife of the accused and crime alleging commission of offence punishable under Section 354 of IPC also was registered and is on investigation.

6. It is submitted by the learned counsel for the petitioner that the petitioner is innocent and the allegations are false. According to the learned counsel for the petitioner, this case was registered as a counterblast to avoid legal consequence, which would arise out of the case lodged by the wife of the accused.

7. Whereas the learned Public Prosecutor strongly opposed bail, on the submission that, the petitioner herein, who is having criminal antecedents and involvement in four crimes, manhandled the defacto complainant and obstructed his duty, while doctor was examining his wife, on the allegation that, the doctor had touched on her body, as part of examination.

8. According to the learned Public Prosecutor, now attack against doctors are on high alarm and therefore, doctors are under threat and fear, apprehending their implication in crimes, while they will be doing their duty by examining the patients by way of clinical examinations. Therefore, threat against doctors would be detrimental to the interest of people at large. Thus it is submitted that this is not a fit case to grant anticipatory bail, where prosecution allegations are well made out.

9. I have perused the First Information Statement given by the doctor where from this crime was registered along with the statement given by the Pharmacy Assistant as well as Administrative Assistant of Star Med Family Clinic where, the occurrence was reported. That apart, one Rakhi also given statement in support of the occurrence.

10. In this matter, the FIS was lodged at 11.30 hours on 09.01.2023 and crime was registered accordingly alleging commission of the above offences. It is true that a counter case also was registered after registration of this crime.

11. On perusal of the case records along with the scene mahazar and the statements of the witnesses, the prosecution case is well made out. Be it so, the allegation of misbehaviour at the option of the doctor, that has been pointed out by the learned counsel for the petitioner, alleged to be committed in the presence

of two sisters and in an open space at the casualty of the hospital cannot be believed prima facie. It is relevant to note further that the allegation of misbehaviour was raised, after registration of this crime.

12. In this matter, it is reported by the Investigating Officer that the petitioner is a person having criminal antecedents and he has involvement in 4 crimes as listed hereunder:

1. Erumapetty P S Cr.994/2014 U/s.143, 147, 149, 333, 341, 326 r/w 34 IPC.
2. Ponnani P.S.,Cr:324/2020 U/s.120(b), 341, 324, 364(A), 395, 326 IPC.
3. Kuttipuram P.S.Cr.No.210/22 U/s.117(d) KP Act.
4. Chaliserry P S Cr:185/2015 u/s.118(e) KP Act.

13. On evaluation of the factual aspects to be espoused from the case diary materials, the prosecution case is well made out and attack against doctors, while examining the patients, merely because they touched on the body of the patients could not be encouraged at all. Doctors, who had turmoiled their energy and time to learn the method of treating patients, when examining patients clinically, they cannot do the said exercise without touching the patients. If a patient, who wants treatment, is aggrieved in the matter of touch on the body of the petitioner as part of examination, it is difficult for a doctor to do his medical profession by resorting to clinical examination. The same would include placing of Stethoscope on the left chest portion of the patient to observe and evaluate the heart beat. At the same time, this Court is conscious of the fact that all allegations on the ground of misbehaviour by overstepping the limit of the doctor while examining patients are false. Genuine cases of such nature could not be ruled out in toto. But generally, it could be held that truth of those allegations should be evaluated from the materials and attending circumstances to separate the grain from the chaff.

14. In the case on hand, attack against the doctor at the instance of the petitioner is well made out and in such a case, if the petitioner is granted anticipatory bail, it would lead to a very dangerous situation, thereby, doctors, who are duty bound to treat patients as part of their oath, will not get protection and if so, the proper maintenance of health of the public at large would be in peril. In such case, arrest and custodial interrogation are absolutely necessary to accomplish successful investigation and eventful prosecution.

15. Therefore, in such cases, grant of anticipatory bail, when prima facie the offences are made out, would not only spoil the investigation but would lead to traumatic situation. Therefore, I am not inclined to allow this petition.

In the result, this bail application stands dismissed.