
(2021) 04 KL CK 0228

In the High Court Of Kerala

Case No : Bail Application No. 2728 Of 2021

Muhammed Midlaj C.K

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 30-04-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 379

Kerala Protection Of River Banks (Regulation And Removal Of Sand) Act, 2001 —
Section 20, 23

Citation : (2021) 04 KL CK 0228

Hon'ble Judges : Kauser Edappagath, J

Bench : Single Bench

Advocate : K. Rakesh, M.R. Dhanil

Final Decision : Allowed

Judgement

1. This is an application filed u/s 438 of Code of Criminal Procedure seeking pre-arrest bai
2. The petitioner is the accused in Crime No.90/2021 of Pattambi Police Station, Palakkad. The offences alleged are under Section 379 of IPC and Sections 20 and 23 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (hereinafter referred to as the Act).
3. The prosecution case in short is that the petitioner was found transporting river sand illegally in the lorry bearing Registration No KL-18C - 8920 and thereby committed the offence.
4. Heard both sides and perused the case diary.
5. The learned counsel for the petitioner submitted that the petitioner is absolutely innocent and he has been falsely implicated in the present case. He further submitted that there are no materials to connect the petitioner with the alleged crime and hence he is entitled to get bail. The learned Public Prosecutor

opposed the bail application. He contended that the alleged incident occurred as a part of the intentional criminal acts of the petitioner and if the petitioner is released on bail at this stage, it would affect the course of investigation.

6. The only non bailable offence alleged is u/s 379 of IPC. The offence under Sections 20 and 23 of the Act are bailable. When there is specific/special law covering the question of theft of river sands, the general law contained in S.379 of IPC may not be applicable. The investigation is almost over and the recovery of sand and vehicle used for the commission of the offence has already been effected. Considering the allegations levelled against the petitioner, his custodial interrogation does not appear to be necessary. For all these reasons, the petitioner is entitled to pre-arrest bail on conditions.

In the result, the application is allowed on the following conditions:-

- (i) The petitioner shall be released on bail in the event of his arrest on executing a bond for `1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum each to the satisfaction of the arresting officer/investigating officer, as the case may be.
- (ii) The petitioner shall fully co-operate with the investigation, including subjecting himself to the deemed police custody for the purpose of discovery, if any, as and when demanded.
- (iii) The petitioner shall appear before the investigating officer between 10.00 a.m and 11.00 a.m on every Saturday until further orders. The petitioner shall also appear before the investigating officer as and when required by him.
- (iv) The petitioner shall not commit any offence of like nature while on bail.
- (v) The petitioner shall not make any attempt to contact any of the prosecution witnesses, directly or through any other person, or any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.
- (vi) The petitioner shall not leave State of Kerala without the permission of the trial Court.