
(2020) 12 KL CK 0225
In the High Court Of Kerala
Case No : Bail Application No. 7452 Of 2020

Nazar T.C	Vs	APPELLANT
State Of Kerala		RESPONDENT

Date of Decision : 15-12-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 304, 304A

Citation : (2020) 12 KL CK 0225

Hon'ble Judges : Ashok Menon, J

Bench : Single Bench

Advocate : T.K. Sandeep, C.K. Suresh

Final Decision : Disposed Of

Judgement

1. This is an application for anticipatory bail under Section 438 Cr.PC.

2. A 60-year-old man, named Muhammed, was found dead on 11.10.2020 with his legs tangled in an electric wire fencing across a plantain plantation.

Crime No.307/2020 was registered at Agali Police Station and investigation started. The plantation was allegedly leased out to the applicant for the purpose of cultivating plantains. It is stated that the deceased was none other than the brother-in-law of the applicant. But, they were not in good terms. They had quarrelled earlier also. The deceased was using a pathway across the said plantation which was being fenced by the applicant to protect it from wild boars. The deceased could not use the pathway because of the electric wire and therefore objected to it. But, despite his objection, the applicant continued with the fencing and it resulted in the death of Muhammed, and he, thus committed culpable homicide knowing fully well that putting across an electric wire in the fence of his plantation would cause the

death of a human being.

3. The applicant states that the allegations are not true. He is a poor farmer. The plantain plantation does not belong to him and the people in that

locality usually put electric wire fencing to protect their cultivation from the attack by wild boars and other wild animals. Therefore, there was no

intention on the part of the applicant to cause the death of anyone much less his brother-in-law, and therefore, he seeks anticipatory bail.

4. Heard the learned counsel for the applicant and the learned Public Prosecutor.

5. The learned counsel appearing for the applicant submits that at the most only a bailable offence punishable under Section 304A IPC would be

attracted in this case for the negligence shown by the applicant by installing an electric fence around his plantation. There was no intention on his part

to cause the death of any human being much less his brother-in-law. Therefore, he is entitled to anticipatory bail, pleads the learned counsel for the

applicant.

6. The learned Prosecutor, on the other hand, submits that there is specific evidence regarding the applicant drawing an electric wire from his motor-

shed to protect the fencing. A few months ago, there was an altercation between the applicant and the deceased regarding the putting up of the fence

because putting up an electric fence across the plantation made it impossible for the deceased to walk across the plantation which was being used by

him as a pathway. The applicant, therefore, knew fully well that the deceased was frequenting the plantation for the purpose of using the pathway and

after having such knowledge, he installed the electric wire fencing which could have caused the death of a human being. Moreover, the electric line

was drawn from the motor-shed, and not from a battery that charged the electric fence, as is usually used to keep away the wild animals. An electric

wire taken from the electric line used for the purpose of the motor could prove fatal to a human being in case he comes into contact with such a wire.

Hence, an offence under Section 304 IPC is squarely attracted in this case, pleads the learned Public Prosecutor.

7. After having heard the submissions made on either side, I find that the intention behind the applicant in installing an electric line across his plantation

would have been to keep away the wild animals. But, it was within the knowledge of the applicant that a live high voltage electric wire could prove

fatal to humans. What the farmers usually do is to electrify the fence with the help of a battery which is not capable of killing a human being. It is only

installed for the purpose of keeping wild animals at bay, and may not even cause their death. Under the circumstances, if the applicant had taken

drawn the high voltage electric line from the motor-shed as is alleged by the prosecution, he would have known the consequences of his act.

Moreover, there was an altercation between the applicant and the deceased regarding the installation of the electric fence because the deceased used

to frequent that place and used it as a pathway, which the applicant was allegedly having knowledge about. Hence, I find that there is a fair possibility

of the applicant being made to face the allegation of committing an offence punishable under Section 304 IPC, rather than an accusation under Section

304A IPC. However, I am not concluding on that point, and leave it to the trial court to decide at the time of framing of charge. Sufficient material has

allegedly been collected by the prosecution to indicate that there is prima facie an offence made out under Section 304 IPC. Therefore, the applicant is

not entitled to an extraordinary remedy of anticipatory bail in this case. He is therefore directed to surrender before the investigating officer and after

his interrogation and recovery, if any, he shall be produced before the jurisdictional court, where he is at liberty to apply for a regular bail, which shall

be considered and disposed of on its merits by the jurisdictional court preferably on the same day.

The bail application is disposed of as above.