

(2021) 04 KL CK 0162
In the High Court Of Kerala
Case No : Bail Application No. 2900 Of 2021

Santhosh And Ors

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 23-04-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 143, 147, 148, 188, 294(b), 427, 447, 506(ii)
Kerala Prevention Of Damage To Private Property And Payment Of Compensation Act,
2019 — Section 3, 5, 6, 8

Citation : (2021) 04 KL CK 0162

Hon'ble Judges : K. Babu, J

Bench : Single Bench

Advocate : M.R. Sarin, M.R Dhanil

Final Decision : Allowed

Judgement

1. This application is filed under Section 438 of the Code of Criminal Procedure.
2. The petitioners are the accused in Crime No.177 of 2021 of Maranallor Police Station. The offences alleged against the petitioners are punishable under Sections 143, 147, 148, 188, 447, 294 b, 427, 506 II of IPC and Sections 3 and 5 of the Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019.
3. The prosecution case is that on 31.01.2021 at about 4.00 p.m., the petitioners and the other accused formed themselves into an unlawful assembly, trespassed upon the property of the defacto complainant, showered abuses on him and committed mischief at his residence causing a loss of Rupees Two Lakhs.
4. The case of the petitioners is as follows:-

The defacto complainant illegally constructed a compound wall encroaching upon the public road. The petitioners and the other accused preferred complaint against the defacto complainant before the Secretary Maranallor Grama

Panchayat. The Competent Authority of the Panchayat issued an order to demolish the illegal construction. Subsequently, the defacto complainant instituted O.S.No.88/2021 before the Munsiff Court, Neyattinkara and obtained an interim order of injunction against the petitioners and others. After obtaining the order of injunction the defacto complainant and his men themselves demolished the illegal constructions in the midnight and filed a false complaint implicating the petitioners and others as accused.

5. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

6. The learned Public Prosecutor submitted that the custodial interrogation of the petitioners is not required in this case.

7. The learned counsel for the petitioners submitted that the petitioners have been falsely implicated in this crime with intend to harass them for the reason that they preferred compliant against the defacto complainant. He further submitted that the petitioners are ready to cooperate with the investigation.

8. Having gone through the materials this Court is of the view that there is some doubt as the genuineness of the prosecution case.

9. The materials available lead me to conclude that there is some doubt as to the mens rea of the petitioners in the commission of the alleged acts. There is no possibility of the petitioners to flee from justice. Considering the entire circumstances, I am of the view that the petitioners could establish a prima facie case for getting the benefits contemplated under Section 438 of the Code of Criminal Procedure.

10. As per Section 8 of the Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019, no person accused under Section 5 or Section 6 shall be released on bail on execution of bond by two sureties and depositing in the Court the amount not less than one half the value of the property destroyed or damage as may be determined by Court on the basis of police report or on furnishing bank guarantee for the said amount.

11. It is submitted from the part of prosecution that the loss suffered by the defacto complainant is valued at Rs.Two Lakhs.

In the result, this Bail Application is allowed as follows :

(i) The petitioners shall appear before the Investigating Officer within two weeks from today and shall undergo interrogation.

(ii) The petitioners together shall furnish a bank guarantee for a sum of Rupees One Lakh before the Jurisdictional Magistrate.

(iii) The investigating officer is directed to release the petitioners, in the event, they are arrested, on their executing bond for Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties each for the like sum.

(iv) The petitioners shall appear before the Investigating Officer as and when

required.

(v) The petitioners shall not interfere with the process of investigation. The petitioners shall not influence or intimidate the witnesses in this case.