

(2022) 01 KL CK 0021

In the High Court Of Kerala

Case No : Bail Application No. 5319 Of 2021

T.P.Nandakumar S/o K.Damodaran Nair

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 05-01-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 34, 153, 505(1)(b)

Kerala Epidemic Disease Corona Virus disease (Covid-19) Regulations, 2020 — Section 3(5)

Kerala Epidemic Diseases Ordinance, 2021 — Section 5

Citation : (2022) 01 KL CK 0021

Hon'ble Judges : Shircy V, J

Bench : Single Bench

Advocate : Bimala Baby, Blaise Joseph, C.N.Prabhakaran

Final Decision : Dismissed

Judgement

Shircy V., J

1. Apprehending arrest in connection with Crime No. 44 of 2021 of Cyber Crime Police Station, Thiruvananthapuram registered for the offences

punishable under Sections 153, 505(1)(b) and 34 of Indian Penal Code ,Section 3(5) of the Kerala Epidemic Disease Corona Virus disease (Covid-19)

Regulations, 2020 and Section 5 of the Kerala Epidemic Diseases Ordinance, 2021 (Ordinance No.22 of 2021), the petitioners have preferred this

application under Section 438 of the Code of Criminal Procedure.

2. The present FIR is one arising out of a news item published in an online channel. Prosecution allegation is that the petitioners with the intention to

tarnish the preventive measures adopted by the Government of Kerala in connection with Covid-19 and to create a panic situation among the public,

published a fake video through the online channel namely www.crimeonline.in owned by the 1st petitioner. He published a fake news that covid

affected patients are being killed in Government Medical colleges. In, Pariyaram Medical College, Kannur, hospital authorities were not admitting

patients as there was acute shortage of staff and scarcity of oxygen cylinders. The news was published on 05.06.2021 with photos of the staffs and

photograph of the building of Pariyaram Medical college, fully knowing that it is a fake one and thereby committed the aforesaid offences.

3. The learned counsel for the petitioners submit that the 1st petitioner is a journalist and the Chief Editor of the investigative Malayalam

fortnightly and English Magazine ,namely, Crime and YouTube channel, Crime Online and the 2nd petitioner is his staff. The 1st petitioner received

certain reliable information regarding the treatments in Government Hospital in connection with Covid -19 and so he immediately in good faith

submitted a complaint supported with documents before the Chief Minister of Kerala. He received a reply from the office of the Chief Minister that

the complaint was forwarded to the Principal Secretary, Health and Family Welfare Department for appropriate action. So, he published the news

item. While publishing such a news, his intention was to alert the Government. Such news item was published in other medias also. The petitioners

have not committed any offence as alleged by the prosecution. Still, they apprehend arrest and hence this application.

4. The learned Public Prosecutor opposed the application contending that the petitioners with the ulterior motive and intention to tarnish the preventive

measures adopted by the Government during the pandemic situation and to make the people panic and confused published the fake news and so they

are not entitled for anticipatory bail.

5. This is an admitted fact that the 1st petitioner is the Chief Editor of a YouTube channel namely www.crimeonline.in. Annexure

A2 is the copy of the complaint submitted by the petitioner before the Chief Minister of Kerala dated 03.06.2021 regarding the death of certain Covid

affected patients with reference to some incidents that happened during the pandemic period in the hospitals in Kerala. Annexure A3 is the intimation

received by him from the office of the Chief Minister. The said reply would reveal that the complaint was received in the office of the Chief Minister

and it was forwarded to the Principal Secretary of Health and Family Welfare Department 'for taking appropriate action'. While so, on 11.06.2021 this crime has been registered alleging that his intention was to create confusion or fear among the public or make them panic, by exploiting the pandemic situation prevailing at that point of time. The learned counsel for the petitioners submit that similar news items have been reported in various channels namely Karma News, Media One, News 18 Keralam, Malayalivarthha Inside, Kerala Kaumudi etc. The news was regarding the doubts, suspicion and apprehension expressed especially by the relatives regarding the death of Covid patients while undergoing treatment in the General Hospital, Trivandrum as well in other Medical Colleges in Kerala. So, the petitioners are not the only persons who published such news item in the online channel. But, it appears that case has been registered against them alone. Admittedly, the news was published at a time when the death of Covid patients were not officially declared or published by the Government through media. But whether the news published by the petitioners is a fake news or a genuine one, are matters to be decided at a later point of time. The report submitted by the investigating officer indicates that the special team constituted conducted search in the office of the petitioners with the aid of cyber expert on the strength of the order issued by the Chief Judicial Magistrate, Thiruvananthapuram, dtd. 07.07.2021. In the search several documents were seized from their office. Those materials were produced before the Court concerned. Statements of staff were also recorded. So, it appears that substantive evidence has been collected and major portion of the investigation is over. In the above background, taking into consideration of the nature of the offence, I am of the considered opinion that it is appropriate to accept the request for pre-arrest bail. More over materials on record as such are not sufficient to conclude that custodial interrogation is inevitable. Criminal jurisprudence relating to bail is that the grant of bail is the general rule and refusal is an exception. However, the gravity of the offence committed is a matter of importance while considering the bail application. But, the freedom of the individual is also of utmost importance. A citizen can be put behind bars, only if there is a strong prima facie case to be probed into and custodial interrogation is inevitable to proceed with the investigation. The fact that his complaint before publication of the news item to the Chief Minister was forwarded to the Principal Secretary, Health &

Family Welfare Department, for appropriate action itself indicates that the matter referred therein was one to be viewed seriously and the

Government has taken note of the same. So for 'appropriate action' the complaint was forwarded to the department concerned. Annexure A2 is dated

03.06.2021 and not 30.06.2021 as submitted by the I.O. The 1st petitioner received intimation by email regarding the petition submitted by him on

01.07.2021.

6. Now the investigation is going on in full swing by the special investigation team constituted to investigate into the allegations levelled against the

petitioners. Most of the witnesses are officials especially attached to the Department of Health. So, the petitioners may not be in a position to

influence or intimidate such witnesses. As referred above the nature of accusation levelled against the petitioners, further materials to be collected by

the investigating agency and the other facts and circumstances of the case etc are not sufficient to convince this court that custodial interrogation of

both the petitioners are absolutely necessary to proceed with the investigation which is well in progress. Such being the case, there is no justification to

seek their custody to proceed with the investigation of the case.

Therefore, I find that the petitioners are entitled for anticipatory bail subject to the following conditions:

(i) The petitioners shall be released on bail on each of them executing a bond for a sum of Rs.1,00,000/-(Rupees One Lakh only) with two solvent sureties for the like

sum each in the event of their arrest by the police in connection with the above crime.

(ii) The petitioners shall co-operate with the investigation.

(iii) The petitioners shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him

from disclosing such facts to the court or to any police officer or tamper with the evidence.

(iv) The petitioners shall not commit any offence while on bail.

In case of violation of any of the above conditions, the jurisdictional court is empowered to cancel the bail in accordance with the law.