

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 15TH DAY OF JANUARY 2020 / 25TH POU SHA, 1941

Bail Appl..No.9203 OF 2019

AGAINST THE ORDER/JUDGMENT IN CRMC 2196/2019 DATED 11-12-2019 OF DISTRICT COURT & SESSIONS COURT, THRISSUR

CRIME NO.610/2019 OF Cherpu Police Station , Thrissur

PETITIONERS/ACCUSED:

- 1 ROBIN, AGED 38 YEARS
S/O FRANCIS.C, CHERUVATHUR HOUSE,
KUNNAMKULAM, THRISSUR.
- 2 DAVID VINCENT, AGED 52 YEARS
S/O VARGHESE, PUTHUR HOUSE, KURUMALA
P.O.THRISSUR.
- 3 PRINCY ISSACE, AGED 49 YEARS
S/O LEAONS, KANGAPADAN HOUSE, NELLIKKUNNU,
THRISSUR.

BY ADVS.

SRI.S.RAJEEV

SRI.K.K.DHEERENDRAKRISHNAN

SRI.V.VINAY

SRI.D.FEROZE

SRI.K.ANAND (A-1921)

RESPONDENT/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031,
(CRIME NO 610/2019 OF CHERPU POLICE STATION,
THRISSUR DISTRICT)

2 STATION HOUSE OFFICER,
CHERPU POLICE STATION, THRISSUR DISTRICT-680
561, (CRIME NO 610/2019 OF CHERPU POLICE
STATION, THRISSUR DISTRICT)

BY SR. PP SRI. AMJED ALI

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
15.01.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.

P.B.SURESH KUMAR, J.

Bail Application No.9203 of 2019

Dated this is the 15th day of January, 2020

ORDER

This is an application for anticipatory bail preferred under Section 438 of the Code of Criminal Procedure.

2. The petitioners are accused Nos.1 to 3 in Crime No. 610 of 2019 of Cherpu Police Station registered under Sections 294(b), 353 and 506(i) read with Section 34 of the Indian Penal Code (IPC). The Assistant Educational Officer, Cherpu is the de facto complainant in the case. The allegations against the accused in the case are that, while the de facto complaint had visited a school under her jurisdiction on 18.10.2019, having found that the Head Master of the school has not disbursed the lump sum grant payable to the students

belonging to Scheduled Castes, she has issued directions to the Manager of the School to take appropriate action against the Head Master; that annoyed and infuriated by the said conduct of the de facto complainant, the accused who are the office bearers of an association of Head Masters went to the office of the de facto complainant and threatened and abused the de facto complainant, as a result of which, the accused fainted. The petitioners moved for anticipatory bail before the Sessions Court, and in terms of Annexure-II order, the Sessions Court declined the relief to the petitioners.

3. Heard the learned counsel for the petitioners as also the learned Public Prosecutor.

4. The learned Public Prosecutor has made available the case diary and opposed the application.

5. It was pointed out by the learned counsel for the petitioners that the only non-bailable offence attributed against the accused is the offence punishable under Section 353 IPC. It was contended by the learned counsel that in order

to attract the offence under Section 353 IPC, the allegations made against the accused should make out a case that the accused have either assaulted or used criminal force to the public servant in the execution of his/her duty as such public servant. According to the learned counsel, the allegations against the accused do not make out a case of assault or use of criminal force. The learned counsel has elaborated the said submission by drawing the attention of the court to the definition of 'criminal force' contained in Section 350 IPC and also the definition of 'assault' contained in Section 351 IPC. If Section 353 IPC is understood in the light of the definition of 'criminal force' contained in Section 350 IPC and the definition of 'assault' contained in Section 351 IPC, the allegations against the accused do not make out the offence under Section 353 IPC, submits the learned counsel. It was also pointed out by the learned counsel for the petitioners, placing reliance on Annexure I Circular issued by the Government that lump sum grant payable to the students belonging to Scheduled Castes is

now being disbursed directly to the bank account of the eligible students; that the Head Master of the school has no role in the matter and that the accused went to the office of the de facto complainant only to explain the said fact to her.

6. The fact that the de facto complainant fainted in the course of the conversation the accused had with her is not seriously disputed. A perusal of the case diary reveals that the materials collected by the Investigating Officer in the course of investigation include even materials which would indicate that the accused have abused and threatened their superior officer, the de facto complainant at her office by shouting at her "നീ ജീവനാടെ ഇരുന്നാലല്ല ഫയൽ എഴുതുക പുറത്തിറങ്ങി എന്നാൽ ക്ഷണിച്ചു തരും". True, the reliability of the aforesaid materials cannot be judged at this stage of the proceedings. The explanation to Section 351 IPC clarifies that mere words do not amount to an assault, but the explanation also clarifies that the words which a person use may give to his gestures or preparation such a meaning as may make those gestures or

preparations amount to an assault. Needless to say, it is too early to consider the question as to whether the allegations against the accused would amount to a case under Section 353 IPC.

7. Be that as it may, the arrest of the accused in a case not only serves the purpose of securing his presence, but also serves various other purposes. Section 438 of the Code of Criminal Procedure is a provision intended to safeguard the liberty of individuals and to protect them from the possibility of being humiliated and from being subjected to unnecessary police custody. At the same time, crimes being wrongs committed against the society, which have harmful effects on the public and which affects adversely the well-being of the society, the courts have a duty to maintain a balance between the rights of the individuals to safeguard their personal liberty and the social interest. Anticipatory bail is, therefore, one to be granted in extraordinary cases where the court entertains a doubt from the materials available as to the genuineness of the

allegations made against the accused or where the court finds that the allegations do not make out the offences alleged, and the same cannot, therefore, be granted as a matter of right. The judicial discretion conferred upon the court to grant anticipatory bail is, therefore, to be exercised after due application of mind as to the nature of accusation, seriousness of the offences attributed, the object of punishment for the attributed acts, the case set out by the applicants, the antecedents of the applicants, the likelihood of the applicants repeating the acts alleged, the impact such crimes would make on the well-being of the society, the reasons, if any, for the victim to attribute false allegations against the accused, the rights of the victim to get protection from intimidation and harassment etc. An order granting anticipatory bail shall never be one that enables the accused to grin like a cheshire cat at the victim [See **State Of M.P. & Anr v Ram Krishna Balothia & Anr**, (1995) 3 SCC 221 and **P. Chidambaram v. Directorate of Enforcement**, (2019) 9 SCC 24].

8. It is common knowledge that occurrences in the nature of one alleged in the case on hand is rampant in the State. Unhealthy competitions among the associations of employees compel its office bearers to resort to such acts to provide protection to their members from being subjected to any sort of disciplinary action, to maintain their support. Seldom cases of this nature are registered, as cases of this nature would normally be hushed up by exerting pressure on the victim. Needless to say, it is not a case for anticipatory bail.

The application for anticipatory bail, in the circumstances, is dismissed.

**Sd/-
P.B.SURESH KUMAR, JUDGE.**

ds 08.01.2020

APPENDIX

PETITIONERS EXHIBITS:

ANNEXURE-I TRUE COPY OF THE CIRCULAR ISSUED BY
THE GOVERNMENT.

ANNEXURE-II CERTIFIED COPY OF THE ORDER DATED
11.12.2019 IN CRL.MC 2196 OF 2019
PASSED BY THE COURT OF SESSIONS,
THRISSUR.

This is a Print Replica of the raw text of the judgment as appearing on Court website.

Publisher has only added the Page para for convenience in referencing.