

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 29TH AUGUST 2008 / 7TH BHADRA 1930

Crl.Rev.Pet.No. 3022 of 2008()

SC.1144/2008 of ADDL. SESSIONS COURT, FAST TRACK-I, TRIVANDRUM

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REVN. PETITIONER/ACCUSED:

SREELAL, S/O. RAGHAVAN,
KADUKARA VEEDU,
CHEKKALAVILAKKOM,
KADAKKAVOOR DESOM,
KADAKKAVOOR VILLAGE.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM REPRESENTING THE S.I OF
CHIRAYINKEEZH POLICE STATION
IN CRIME NO. 150/2002.

BY ADV. SRI. C.M. NAZER, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 29.08.2008, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V. RAMKUMAR , J.

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Crl.R.P. No. 3022 of 2008

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Dated this the 29th day of August, 2008.

ORDER

The petitioner, who is the accused in S.C. No. 1144 of 2008 on the file of the Additional Sessions Court, Fast Track Court-I, Thiruvananthapuram challenges the order dated 13.08.2008 passed by the said court cancelling the bail granted to him and remanding him to the judicial custody till the examination of the remaining witnesses are exhausted.

2. What prompted the trial court to cancel the bail was the alleged formidable appearance of the petitioner in the dock and the response of the de facto complainant examined as PW1 while he was deposing before the court from the witness box. The learned Judge felt that the witness was seeing in an embarrassing situation and unable to answer the questions put to him by the learned Public Prosecutor presumably on account of a fear developed from the appearance of the accused in the dock. According to the learned Judge, from the manner in which PW1 standing in the dock and answering the questions put to him

during the cross examination by the Public Prosecutor, the Judge was convinced that the witness was put under threat which, according to the Judge, was the reason for the witness started prevaricating in the witness box resulting in he being declared hostile when cross examined by the Public Prosecutor. The court below would say that going by the prosecution story, the 1st accused was a leader of goonda gang and PW1 was assaulted and fisted with incise injuries and fracture consequent on his refusal to join as a member of the said gang led by the accused. From this, the court below observed that PW1, who is an innocent person, had suffered worst form of brutality at the instance of the accused and was standing in the witness box as a lamb and was seen making efforts to escape from the courts on being afraid of his life. This, according to the court below, showed that the muscle power had one of the legal system and the victim was forced to turn inherent to the prosecution.

There was no complaint either by the witness himself or by the prosecutor or by the Investigating Officer that the accused or any member of his gang was threatening the witness or any

member of his gang was intimidated the witness against deposing in favour of the prosecution. There was also no petition filed before the court to the effect that the accused had misused the system given to him or abused the liberty granted to him. If it occurred to the trial Judge that any witness deposing before the court showed symptoms of fear, it was certainly open to the trial Judge to intervene and show a reassuring gesture so as to allay of fear in the minds of the witness and see that he was comfortably placed in the witness box and was prepared to give evidence fearlessly. In the absence of a complaint either made by the witness or by any person from the prosecution side, the learned Judge should not have suo motu cancelled the bail of the accused. Under these circumstances, the impugned order is set aside and the petitioner shall continue to be on bail on the same bond as well as on the same sureties. This order, however, will not preclude the court below from canceling the bail granted to the petitioner and remanding him to custody in case there is any written complaint from parties alleging that the revision petitioner/accused is threatening the witness or influencing the

witness or attempting to meddle with the prosecution evidence.

This Crl.R.P. is disposed of as above.

The petitioner shall be released from custody forthwith and he shall continue to be on bail on the same bond and on the same sureties executed earlier.

Dated this the 29th day of August, 2008.

V. RAMKUMAR, JUDGE.

CRL.R.P. NO. 3022/2008

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