

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

TUESDAY, THE 30TH DAY OF APRIL 2019 / 10TH VAISAKHA, 1941

Bail Appl..No. 3060 of 2019

AGAINST THE ORDER IN CMP 1394/2019 of JUDICIAL MAGISTRATE
OF FIRST CLASS ,NADAPURAM DATED 20-04-2019

CRIME NO. 22/2019 OF Nadapuram Police Station , Kozhikode

PETITIONER :

ABDUSSAMAD ,
AGED 48 YEARS
S/O. SOOPY, 3/445, ARANGATT THAZHAKUNIYIL,
CHERAPURAM P.O, KAKKATTIL.

BY ADVS.
SRI.S.RAJEEV
SRI.D.FEROZE
SRI.K.ANAND (A-1921)
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY

RESPONDENT :

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM 682 031
(CRIME NO. 22/2019 OF NADAPURAM POLICE
STATION, KOZHIKODE DISTRICT)

BY SRI C K PRASAD - PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
30.04.2019, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

O R D E R

This is an application for bail filed under Section 439 Cr.P.C.

2. The petitioner is the 8th accused in Crime No.22/2019 of Nadapuram Police Station for the offences punishable under Sections 143, 147, 148, 341, 232, 324 and 307 read with Section 149 of IPC.

3. The prosecution case is that, on 19.01.2019 at about 7.00 p.m, while the de facto complainant was returning from Chelakkad mosque after Namas, all the accused formed into an unlawful assembly armed with deadly weapons for the purpose of rioting and in prosecution of their common object wrongly restrained the de facto complainant and others and stabbed the de facto complainant with knife on his stomach and left hand in an attempt to commit murder. It is further alleged that all other accused voluntarily caused hurt by kicking him.

4. The petitioner along with others moved an application for anticipatory bail as B.A.No.2186/2019 before this Court, in which, the petitioner was directed to surrender before the Investigating Officer within ten days. Pursuant to the direction

issued by this Court, the petitioner surrendered before the learned Judicial First Class Magistrate, Nadapuram on 17.04.2019. The petitioner was remanded to judicial custody. Consequently, the petitioner moved C.M.P.No.1394/2019 before the learned Magistrate seeking bail. The bail application was declined on the ground that the investigation is not completed and the accused if released, would tamper with the evidence.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor. Perused the case diary.

6. The learned Public Prosecutor on instructions submits that A3 to A5 granted anticipatory bail by this Court in B.A.No.1750/2019 and A1 and A2 were granted regular bail in B.A.Nos.801 and 827 of 2019 respectively.

7. The case diary would reveal that the petitioner was not an accused in the FIR. After conducting investigation, the police filed report incorporating the name of the petitioner as well. The petitioner surrendered before the court on 17.04.2019 and it appears that his role in the crime is limited. *Prima facie*, there is nothing to indicate that the petitioner did the act with such intention or knowledge and under such

circumstances that if he by that act cause death, he would be guilty of culpable homicide not amounting to murder. In view of the above, further detention of the accused in judicial custody is not warranted for investigation purpose.

8. In the result, the petition is allowed and it is ordered as follows. The petitioner shall be released on bail on the following conditions:-

- i) The petitioner shall execute a bond for Rs.50,000/- (Rupees Fifty thousand only) with two solvent sureties each for the like amount to the satisfaction of the Magistrate's court concerned.
- ii) The petitioner shall appear before the Investigating Officer between 9 a.m. and 11 a.m. on all Mondays and Thursdays for a period of three months after being released on bail.
- iii) The petitioner shall not in any manner intimidate or influence the prosecution witnesses. He will not in any manner contact or try to contact the victim or her family members, even over phone or otherwise.
- iv) The petitioner shall surrender his passport in the Magistrate's court/jurisdictional court concerned within three days of his release on

bail. If he does not possess any passport, he shall file an affidavit to that effect in that court within that period.

- v) The petitioner shall not leave the State of Kerala without the prior permission of the jurisdictional court concerned.
- vi) If the petitioner violates any of the conditions of bail, it is open to the Court having jurisdiction over the case to cancel his bail without any further orders from this Court but in accordance with law.

Sd/-

N.ANIL KUMAR

JUDGE