
(2024) 02 KL CK 0088

High Court Of Kerala

Case No: Bail Application No. 981 Of 2024

Haris.A.K

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Feb. 12, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 439
- Indian Penal Code, 1860 - Section 34, 308, 323, 324, 341

Hon'ble Judges: C.S.Dias, J

Bench: Single Bench

Advocate: K.M.Firoz, Shyni V O

Final Decision: Allowed

Judgement

C.S.Dias, J

1. The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the first accused in Crime No.963/2023 registered by the

Kasargod Police Station, Kasargod, alleging the accused to have committed the offences punishable under Sections 341, 323, 324 & 308 read with

Section 34 of the Indian Penal Code, 1860.

2. The prosecution case, in brief, is that: on 25.10.2023, while the de facto complainant was sitting in a cricket ground, the accused Nos.1 to 3 went on a motorcycle and the second accused hit the de facto complainant with a pipe and caused grievous injury. Thus, the accused has committed the above offence.

3. Heard Sri. Firoz K.M, learned counsel appearing for the petitioner and Smt. Shyni V.O., the learned Public Prosecutor appearing for the

respondents.

4. Learned counsel appearing for the petitioner submitted that the petitioner is totally innocent of the accusation levelled against him. He has been

falsely implicated in the crime. Pursuant to Annexure-3 order dated 4.1.2024, the petitioner surrendered before the Investigating Officer on 16.1.2024

and he was arrested and remanded to judicial custody. He has been in custody since then. The investigation in the case is practically complete.

Although the petitioner moved the Sessions Court, Kasargod for bail, the same was rejected by Annexure A2 order. The Investigating Officer has

deliberately incorporated Section 308 of the IPC, to deny bail to the petitioner. The petitioner is ready to abide by any stringent conditions that may be

imposed by this Court and co-operate with the investigation. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the application. She contended that the investigation in the case is in progress. Nonetheless, the

Investigating Officer has not produced the wound certificate of the victim. The only non-bailable offence alleged against the petitioner is under Section

308 of IPC. She conceded to the fact that the petitioner has been in judicial custody since 16.1.2024 and the recovery has been effected.

6. On a consideration of the facts, the materials placed on record, the rival submissions made across the Bar, and particularly taking note of the fact

that the petitioner has been in judicial custody since 16.1.2024, that the wound certificate of the victim has not been placed before this Court, that the

investigation in the case is practically complete and recovery has been effected, I am of the definite view that the petitioner's continued detention

is not necessary. Hence, I am inclined to allow the bail application.

In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.50,000/- (Rupees Fifty

Thousand only) with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the

following conditions:

(i) The petitioner shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m for a period of two months or till the final

report is laid, whichever is earlier. He shall also appear before the Investigating Officer as and when required;

(ii) The petitioner shall not directly or indirectly make any inducement, threat or procure 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 in any manner, whatsoever;

(iii) The petitioner shall not commit any offence while he is on bail;

(iv) The petitioner shall surrender his passport, if any, before the court below at the time of execution of the bond. If he has no passport, he shall file

an affidavit to the effect before the court below on the date of execution of the bond;

(v) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for

cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

(vi) Applications for deletion/modification of the bail conditions shall be moved and entertained by the court below.

(vii) Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect

recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in *Sushila*

Aggarwal v. State (NCT of Delhi) and another [2020 (1) KHC 663].