

(2024) 04 KL CK 0034**High Court Of Kerala****Case No:** Bail Application Nos.1968, 2085 Of 2024

Aneesh Chandran

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: April 3, 2024**Acts Referred:**

- Code of Criminal Procedure, 1973 - Section 438
- Indian Penal Code, 1860 - Section 34, 212, 286, 304, 308, 337, 427
- Explosive Substances Act 1908 - Section 3(a)

Hon'ble Judges: C.S.Dias, J**Bench:** Single Bench**Advocate:** Sruthy N. Bhat, P.M.Rafiq, M.Revikrishnan, Ajeesh K.Sasi, Rahul Sunil, Sruthy K.K, Nikita J. Mendez, Sohail Ahammed Harris P.P., Nanditha S., C.S Hrithwik**Final Decision:** Dismissed**Judgement**

C.S.Dias, J

1. The applications are filed under Section 438 of the Code of Criminal Procedure, for orders of pre-arrest bail.
2. In BA No.1968/2024, the petitioners are the accused 13, 15 to 19, 21 to 23 and 25 to 29 and in BA No.2085/2024 the petitioner is the accused 20 in Crime No.242/2024 of the Hill Palace Police Station, registered against the accused (34 in number), for allegedly committing the offences punishable under Secs.286, 304, 308, 337, 427 and 212 read with Sec.34 of the Indian Penal Code, Section 3(a) of Explosive Substances Act 1908 and Section 9(B) (1) (b) of Explosive Act.
3. The prosecution allegation in the above cases are as follows:

The gravamen of the prosecution allegation in Crime No.242/2024 is that: On 12th of February 2024, the accused Nos.7, 8, 29 to 31 led by the 1st accused (the contractor), on instructions from the accused Nos. 2 to 6 and 9 to 28 - the members of Vadakkumpuram Thalappoli Festival Committee, the Office bearers of Vadakkumpuram Karayogam and the Office bearers of the Temple Devaswom- brought raw materials and explosive substances in a 17 seater tempo traveller van bearing No.KL-07-CB-7133, without any licence or permission from Pothancode, Thiruvananthapuram, being aware that it could cause harm to life and property and even death. The explosives were unloaded and unlawfully stored in a shed built on 70 cents of land belonging to Vadakkumpuram Nair Karayogam, situated on the southern margin of the YMA Road. Due to the careless handling of the explosives, the explosion took place resulting in the death of Vishnu and Anil, causing grievous injuries to 12 persons, extensive damage to 15 nearby houses, leaving them unfit to dwell, and damage to 300 houses and vehicles parked in the locality. The accused Nos. 1 to 34, including the accused Nos.32 to 34, who harboured the accused persons 9 to 11, have committed the offences punishable under Sections 286, 304, 308, 337, 427 and 212 read with Sec.34 of the Indian Penal Code, Section 3(a) of Explosive Substances Act 1908 and Section 9(B) (1) (b) of Explosive Act.

4. Heard; Sri.P.Vijayabhanu, the learned Senior Counsel appearing for the petitioners in BA No.1968/2024, Sri.Geo Paul, the learned counsel appearing for the petitioner in BA No.2085/2024 and Smt.Neema T.V. the learned Senior Public Prosecutor.

5. The learned Senior Counsel appearing for the petitioners submitted that the petitioners are only the festival committee members of the Puthiyakavu Bhagavathy Temple ('temple' for brevity), who are only responsible for the conduct of utsavam at the temple. They do not have any authority in the administrative affairs or planning of the utsavam. The utsavam of the Temple is steeped in a historical legacy of half a century. The integral tradition of the fireworks display, a time-honoured practice, forms an inseparable part of these essential traditions along with vela and thalam among several other longstanding traditions. The Puthiyakavu Bhagavathy Temple Devaswom Committee has a collective representation from both Thekkumpuram (South N.S.S. Karayogam) and Vadakkumpuram (North Nair Karayogam) and is entrusted with the day-to-day operations of the Temple. Fireworks - "vedi vazhipadu" has been separately organised by both Karayogams within the Temple grounds spanning a considerable area. The utsava agosha committee is an independent group and is constituted only to collect offerings from the devotees. The Vadakkumpuram Karayogam had delegated the responsibility of the vedikkettu vazhipadu to the first accused, who had conducted the same in the last year in a secure manner. The 1st accused had assured the committee that he possessed the license and certification for the task. The first accused was to adhere to the instructions of the committee and had agreed to bring the

fireworks only on the evening of 12.2.2024, to avoid storage within the temple premises. To ensure safety during the programme, the Karayogam Committee obtained a public liability insurance coverage for Rs.2/- crore (covering a 7 km vicinity of the temple), against potential damages. On 10.2.2024, the Hill Palace Police issued a notice, as a customary practice, forewarning the potential liabilities. But, the Police subsequently registered a crime against Thekkumpuram Karayogam, even after the safe execution of their vedikettu on 11.2.2024. On learning the same, the Vadakkumpuram Karayogam decided to suspend the fireworks on their side. Despite instructions and previous arrangements, the first accused brought the fireworks early in the morning. He was informed to halt the final vedikettu and that he could store the explosives in the Karayogam property situated approximately 2 kilometres from the temple because the final decision to call off the fireworks had to be taken. Due to the cancellation of the vedikettu, the Contractor and his workers were directed not to erect any fireworks in the temple. In the meantime, the unfortunate incident happened. None of the committee members were present at the scene of occurrence. The cause of the explosion is unknown. The Vadakkumpuram committee has initiated repairs of 50 damaged houses and is diligently continuing with their efforts to address the damage. The petitioners had moved a similar application before the Court of Session, Ernakulam, which was dismissed by Annexure-1 order. The petitioners custodial interrogation is not necessary and no recovery is to be effected. The fifth petitioner's son's marriage is scheduled on 17.3.2024. The petitioners are willing to abide any stringent condition that may be imposed by this Court. Hence, the application may be allowed.

6. Sri.Geo Paul argued that the petitioner in BA 2085/2024 is a Central Government employee. He never attended to any committee meetings in connection with the festival. He was always present in his office on all the working days. The petitioner's application for a similar relief was dismissed by the Court of Session, Ernakulam, by Annexure A1 order. The petitioner's custodial interrogation is not necessary and no recovery is to be effected. The petitioner is willing to abide any stringent condition that may be imposed by this Court and co-operate with the investigation. Hence, the application may be allowed.

7. The learned Public Prosecutor opposed the applications. The Investigating Officer has filed bail objection reports, inter alia, stating that the annual festival of the temple was conducted on the instructions of the office bearers of the Puthiyakavu Temple Devaswom, the petitioners and the representatives of the Vadakkumpuram talapoli committee, by the contractor and his men, without any valid licence or permission. The firecrackers were brought from Pothencode in a tempo traveller and were stored in the vehicle and a shed at Choorakad. On 12.02.2024, at around 10.30 am, the blast took place resulting in the death of two persons, leaving several injured and a trail of

destruction of houses and vehicles of the people in the locality. As per the order of the Deputy Commissioner of Police (Law & Order, Kochi City), the investigation has been entrusted to the Assistant Commissioner of Police, Thrikkakara. Neither the police nor the statutory authorities have given any license or permission to the temple devaswom or the Vadakkumpuram talapoli festival to conduct the fireworks. Even though advance notices were served on the office bearers of the Vadakkumpuram talapoli committee and the Puthiyakavu temple Devaswom, directing them to refrain from conducting the fire display, they secretly brought and stored the firecrackers. The petitioners have violated the directions of the Police. The petitioners have no regard for the rule of the land and law enforcement agencies. The illegal action of the petitioners has caused the loss of two lives, injuries to six persons and damage to 321 dwellings. During the investigation, it is revealed that the petitioners have played an active role in gathering fireworks illegally at the place of investigation. The notice published by the vadakkumpuram talapoli committee has been seized and perused. The notice shows that the festival was conducted under the aegis of the vadakkumpuram talapoli committee. The names of the petitioners figure in the notice, as the office bearers having charge of the vadakkumpuram thalapoli committee. The investigation in the case is at a preliminary stage. If the petitioners are granted orders of pre-arrest bail, it would torpedo the investigation. There is every likelihood of the petitioners fleeing from justice. Therefore, the applications may be dismissed.

8. On an analysis of the materials placed on record, it can be deciphered that Crime No.240/2024 was registered by the Police on 11.02.2024 at 23.35 hours against the members of the Puthiyakavu Temple Committee, the office bearers of the Thekkumpuram Karayogam and others for storing explosives in the Temple compound without any licence. Then, on the following day, i.e., 12.02.2024, at around 10.30 hours, the explosives which were brought from Pothencode in a tempo traveller and were stored in the vehicle and a shed at Choorakad, about two kilometres from the temple, detonated.

9. In BA No.1968/2024 the petitioners have stated that the Puthiyakavu Temple Devaswom Committee is a collective representation of the Thekkumpuram and Vadakkumpuram Karayogams, who are entrusted the day-to-day affairs of the Temple. The fireworks are a time-honoured practice and form an inseparable portion of essential tradition. The Vadakkumpuram Karayogam had delegated the responsibility of conducting the fireworks to the 1st accused, who had securely conducted the same in the last year. It was believing his assurance that the Karayogam has asked him to conduct the fireworks. However, when the Hill Palace Police issued notice on 10.02.2024 and since the crime was registered against the Thekkumpuram Karayogam on 11.02.2024, the Vadakkukmpuram Karayogam informed the first accused to halt the fireworks. But unfortunately, the explosion took place.

10. It is too premature to conclude in these applications, whether the explosives were ordered by the Vadakkumpuram Karayogam without the knowledge of the Puthiyakavu Devi Temple Devaswom and whether the petitioners were not having any role in the explosives that were brought from Pothencode. Moreover, a detailed examination of the evidence and an elaborate documentation of the merits of the case cannot be undertaken at this stage. The fact remains that, notwithstanding the Police warning the office bearers of the Vadakkumpuram talapoli committee and the Puthiyakavu temple Devaswom, to refrain from conducting the fireworks, they took law into their own hands and showed the boldness to store explosives in the Temple compound on the previous day and then bring explosives from Pothencode on the following day and store them in a shed and van at Choorakad.

11. On a *prima facie* appreciation of the materials placed on record, it is apparent that the fireworks proposed to be held on 12.02.2024 were in connection with the celebration of the Puthiyakavu Devi Temple festival, for which both the Karayogams and the Committees have an integral part to play. It is to conduct the fireworks, the accused possessed and stored the explosives without any licence or permission. It is after the explosion, that the office bearers of the temple, Karayogams and the committees are attempting to wash away their hands by renouncing their liabilities. The explosion has resulted in the loss of two lives, injuries to many and substantial damage to 321 dwellings. The materials *prima facie* substantiate the involvement of the petitioners in the crime. The accusations levelled against the petitioners are grave.

12. In *Siddharam Satlingappa Mhetre v. State of Maharashtra* [(2011) 1 SCC 694] the Hon'ble Supreme Court has held as follows:

111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in *Sibbia case* [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail: (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

126. We deem it appropriate to reiterate and assert that discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

13. In *Jai Prakash Singh v. State of Bihar and another*, [(2012) 4 SCC 379] the Hon'ble Supreme Court has held that, an order of pre-arrest bail being an extra ordinary privilege, should be granted only in exceptional cases. The judicial discretion conferred upon the Courts has to be properly exercised, after proper application of mind, to decide whether it is a fit case to grant an order of pre-arrest bail. The court has to be

prima facie satisfied that the applicant has been falsely enrobed in the crime and his liberty is being misused.

14. In P. Chidambaran v. Directorate of Enforcement [(2019) 9 SCC 24] the Hon'ble Supreme Court has held thus:

69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

15. In Srikant Upadhyay v. State of Bihar [2024 KHC OnLine 6137], the Hon'ble Supreme Court, after referring to the earlier precedents on the point, has succinctly laid down the law in the following lines:

8. It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under S.438, CrPC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in HDFC Bank Ltd. v. J.J. Mannan & Anr., 2010 (1) SCC 679).

24. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending

consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases.

xxx xxx xxx xxx xxx"

16. On a consideration of the facts, the materials placed on record, the rival submissions made across the Bar, and on comprehending the nature, seriousness and gravity of the accusations levelled against the petitioners, that the investigation in the case is at the preliminary stage, that the petitioners' custodial interrogation is necessary and that the recovery is to be effected, I am of the definite view that the petitioners have not made any exceptional ground to invoke the extra ordinary jurisdiction of this Court under Sec.438 of the Code. Therefore, I hold that these are not fit cases to grant orders of pre-arrest bail. Consequently, the bail applications are dismissed.