

(2024) 04 KL CK 0035**High Court Of Kerala****Case No:** Bail Application No. 1997 Of 2024

Ratheesh

APPELLANT

Vs

State Of Kerala

RESPONDENT

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

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

Hon'ble Judges: C.S.Dias, J**Bench:** Single Bench**Advocate:** M.R.Sasith, Anjana Suresh.E, Lidhiya George, Neema T V**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 sole accused in Crime No.197/2024 of the Sulthan Batheri Police Station, Wayanad, registered against him for allegedly committing the offences under Sections 341, 324 and 308 of the Indian Penal Code.

2. The crux of the prosecution case, is that; on 03.03.2024 at around 17.00 hours, a conflict arose between the accused and the defacto complainant because the buffalo of the accused entered the compound of the defacto complainant. Then, the accused hit the defacto complainant's father with a firewood. When the defacto complainant attempted to intervene in the incident, the accused also hit him with the firewood. It is only because the defacto complainant warded off the attack, he did not lose his life. Thus, the accused has committed the above offences.

3. Heard; Sri. M. R. Sasith, learned counsel appearing for the petitioner and Smt. Neema. T.V. the learned Public Prosecutor.

4. The learned counsel appearing for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. The offence under Section 308 will not be attracted to the facts of the case. The defacto complainant and his father did not sustain any grievous injuries, as alleged by the prosecution. The Investigating Officer has deliberately incorporated Section 308 of the IPC to deny bail to the petitioner. The petitioner has been in judicial custody since 04.03.2024, the investigation in the case is practically complete, and recovery has been effected. Hence, the petitioner may be released on bail.

5. The learned Public Prosecutor opposed the application. She contended that the investigation is in progress. Nonetheless, she conceded to the fact that the petitioner has been in judicial custody for the last 30 days, the investigation in the case is complete, and the recovery has been effected. Therefore, the application may be dismissed.

6. On an anxious consideration of the facts, the rival submissions made across the Bar, and the materials placed on record, especially considering the fact that the petitioner has been in judicial custody since 04.03.2024, that the investigation in the case is practically complete, and the recovery has been effected, I am of the definite view that the petitioner's further 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 one month 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.

(viii) 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].