

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 24TH DAY OF FEBRUARY 2023 / 5TH PHALGUNA,

1944

BAIL APPL. NO. 834 OF 2023

CRIME NO.19/2023 OF CHALISSERY POLICE STATION, PALAKKAD

DITRICT REGISTERED FOR THE OFFENCES PUNISHABLE UNDER

SECTIONS 341, 323, 294(B) OF THE INDIAN PENAL CODE AND

UNDER SECTIONS 4 & 3 OF THE KERALA HEALTHCARE SERVICE

PERSONS AND HEALTHCARE SERVICE INSTITUTIONS (PREVENTION

OF VIOLENCE AND DAMAGE TO PROPERTY) ACT, 2012

PETITIONER/ACCUSED :

JAMSHID. P.V

AGED 29 YEARS

S/O MUHAMMED ALI,

RESIDING AT PONNATHUVALAPPIL HOUSE,

PERINGANOR POST, PERINGODU VIA,

PATTAMBI TALUK, PALAKKAD DISTRICT,

PIN - 679535

BY ADVS.

J.R.PREM NAVAZ

SUMEEN S.

MUHAMMED SWADIQ

RESPONDENT/STATE :

STATE OF KERALA

REPRESENTED BY THE PUBLIC PROCECUTOR,

HIGH COURT OF KERALA, ERNAKULAM,

PIN - 682031

BY SRI.P G MANU, SR.PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
15.02.2023, THE COURT ON 24.02.2023 DELIVERED THE
FOLLOWING:

"C.R."

A.BADHARUDEEN, J.

B.A.No.834 of 2023

Dated this the 24th day of February, 2023

ORDER

This is an application for anticipatory bail filed under Section 438 of the Code of Criminal Procedure, by the petitioner who is arrayed as accused in Crime No.19 of 2023 of Chalissery Police Station, Palakkad where, he alleged to have committed offences punishable under Sections 341, 323 and 294(b) of the Indian Penal Code as well as under Sections 3 and 4 of the Kerala Healthcare Service Persons and Healthcare Service Institutions

(Prevention of Violence and Damage to Property) Act, 2012.

2. Heard the learned counsel for the petitioner and also the learned Public Prosecutor.

3. I have perused the Case Diary materials produced by the learned Public Prosecutor.

4. The case of the prosecution is that, at about 18.50 hours on 08.01.2023, when the petitioner, who is a doctor by profession, was doing on-call duty, he had examined the wife of the accused aged 27 years at casualty attached to Star Med Family Clinic, Karukaputhoor. While so, the accused herein caught hold on his collar and slapped on his left cheek on the allegation that the defacto complainant touched on the body of the wife of the accused. On that premise, the prosecution alleges commission of the above offences.

5. While pursuing the relief of pre-arrest bail, the learned counsel for the petitioner pointed out that the petitioner is innocent. According to the learned counsel, the doctor misbehaved towards the wife of the accused and for which, complaint was lodged by the wife of the accused and crime alleging commission of offence punishable under Section 354 of IPC also was registered and is on investigation.

6. It is submitted by the learned counsel for the petitioner that the petitioner is innocent and the allegations are false. According to the learned counsel for the petitioner, this case was registered as a counterblast to avoid legal consequence, which would arise out of the case lodged by the wife of the accused.

7. Whereas the learned Public Prosecutor strongly opposed bail, on the submission that, the

petitioner herein, who is having criminal antecedents and involvement in four crimes, manhandled the defacto complainant and obstructed his duty, while doctor was examining his wife, on the allegation that, the doctor had touched on her body, as part of examination.

8. According to the learned Public Prosecutor, now attack against doctors are on high alarm and therefore, doctors are under threat and fear, apprehending their implication in crimes, while they will be doing their duty by examining the patients by way of clinical examinations. Therefore, threat against doctors would be detrimental to the interest of people at large. Thus it is submitted that this is not a fit case to grant anticipatory bail, where prosecution allegations are well made out.

9. I have perused the First Information Statement given by the doctor where from this crime was

registered along with the statement given by the Pharmacy Assistant as well as Administrative Assistant of Star Med Family Clinic where, the occurrence was reported. That apart, one Rakhi also given statement in support of the occurrence.

10. In this matter, the FIS was lodged at 11.30 hours on 09.01.2023 and crime was registered accordingly alleging commission of the above offences. It is true that a counter case also was registered after registration of this crime.

11. On perusal of the case records along with the scene mahazar and the statements of the witnesses, the prosecution case is well made out. Be it so, the allegation of misbehaviour at the option of the doctor, that has been pointed out by the learned counsel for the petitioner, alleged to be committed in the presence of two

sisters and in an open space at the casualty of the hospital cannot be believed prima facie. It is relevant to note further that the allegation of misbehaviour was raised, after registration of this crime.

12. In this matter, it is reported by the Investigating Officer that the petitioner is a person having criminal antecedents and he has involvement in 4 crimes as listed hereunder:

1. Erumapetty P S Cr.994/2014
U/s.143, 147, 149, 333, 341, 326
r/w 34 IPC.
2. Ponnani P.S.,Cr:324/2020
U/s.120(b), 341, 324,
364(A), 395, 326 IPC.
3. Kuttipuram P.S.Cr.No.210/22
U/s.117(d) KP Act.
4. Chalissery P S Cr:185/2015
u/s.118(e) KP Act.

13. On evaluation of the factual aspects to be

espoused from the case diary materials, the prosecution case is well made out and attack against doctors, while examining the patients, merely because they touched on the body of the patients could not be encouraged at all. Doctors, who had turmoiled their energy and time to learn the method of treating patients, when examining patients clinically, they cannot do the said exercise without touching the patients. If a patient, who wants treatment, is aggrieved in the matter of touch on the body of the petitioner as part of examination, it is difficult for a doctor to do his medical profession by resorting to clinical examination. The same would include placing of Stethoscope on the left chest portion of the patient to observe and evaluate the heart beat. At the same time, this Court is conscious of the fact that all allegations on the ground of misbehaviour by overstepping the limit of

the doctor while examining patients are false. Genuine cases of such nature could not be ruled out in toto. But generally, it could be held that truth of those allegations should be evaluated from the materials and attending circumstances to separate the grain from the chaff.

14. In the case on hand, attack against the doctor at the instance of the petitioner is well made out and in such a case, if the petitioner is granted anticipatory bail, it would lead to a very dangerous situation, thereby, doctors, who are duty bound to treat patients as part of their oath, will not get protection and if so, the proper maintenance of health of the public at large would be in peril. In such case, arrest and custodial interrogation are absolutely necessary to accomplish successful investigation and eventful prosecution.

15. Therefore, in such cases, grant of

anticipatory bail, when prima facie the offences are made out, would not only spoil the investigation but would lead to traumatic situation. Therefore, I am not inclined to allow this petition.

In the result, this bail application stands dismissed.

Sd/-

A.BADHARUDEEN, JUDGE

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APPENDIX OF BAIL APPL. 834/2023

PETITIONER ANNEXURES

ANNEXURE A1 THE TRUE COPY OF THE FIR IN CRIME NO:
19 OF 2023 OF CHALISSERRY POLICE
STATION, PALAKKAD DISTRICT