

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945

BAIL APPL. NO. 4063 OF 2023

[CRIME NO.793/2023 OF KATTAKADA POLICE STATION,
THIRUVANANTHAPURAM]

PETITIONER/ACCUSED:

VINEESH
AGED 25 YEARS
S/O VIJAYAN, VALIYAVILA, LAKSHAM VEEDU COLONY,
PARUTHIPPALLY P.O., MANNURKARA VILLAGE,
THIRUVANANTHAPURAM, PIN - 695574
BY ADV M.R.SASITH

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
PIN - 682031

BY SMT. SREEJA V. SR. PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
31.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This is an application for anticipatory bail.

2. The petitioner is the accused in Crime No.793 of 2023 of Kattakada Police Station, Thiruvananthapuram District. The said crime was registered for the offences punishable under Sections 294(b), 447, 324 and 326 of the IPC.

3. The prosecution case is that, on 14.04.2023 at 6 pm., when the defacto complainant obstructed the accused persons from attacking his grandson, in front of the house of the accused, the petitioner trespassed into the house of the defacto complainant to take revenge and attacked the defacto complainant with a wooden stick, thereby causing fracture on the hip of the defacto complainant. The crime was registered in such circumstances, and as the petitioner apprehends arrest in connection with the investigation of the said case, this application for anticipatory bail is submitted in such circumstances.

4. Heard Sri.Sasith M R, the learned counsel appearing for the petitioner and Smt.Sreeja V, the learned Senior Public Prosecutor appearing for the State.

5. The learned counsel for the petitioner submits that, the petitioner is innocent of all the allegations. The learned counsel for the petitioner pointed out that the offence under Section 326 IPC would not be attracted in this case as the wooden stick allegedly used by the petitioner cannot be treated as a weapon. It is pointed out that, in the absence of any weapon, the offence that would be attracted is Section 325 of the IPC, which is bailable.

6. On the other hand, the learned Public Prosecutor opposes the said application by pointing out that, there are specific allegations against the petitioner for attacking the defacto complainant, with a wooden stick and the matter is under investigation.

7. I have gone through the records. The specific contention of the petitioner is that offence under Section 326 would not be attracted as the wooden stick cannot be treated as a weapon for the purpose of the said provision. However, I am not inclined to accept that contention. The learned counsel in this regard also placed reliance upon the decision rendered in **Praveendas v. State of Kerala [2019(4) KLT 815]**. However, the crucial aspect to be noticed is that the factual circumstances in

that case were different. As far as the present case is concerned, the petitioner allegedly assaulted the defacto complainant with a wooden stick, causing grievous hurt to the defacto complainant. In Section 326 IPC, there is no description of any weapon as such. As per the said provision, the offence would be attracted if a person voluntarily causes grievous hurt by the use of any instrument for shooting or stabbing, cutting or instrument which is used as a weapon of offence, and is likely to cause death. The expression "*any instrument which is used as a weapon*", gives a significantly broader scope to the said provision, capable of taking within it, any instrument which does not have the characteristics of a weapon under normal circumstances, provided the same was used as a weapon to cause grievous hurt. Thus, the emphasis is on any "*instrument which used as a weapon*" and it is not necessary that the instrument as such should be a weapon in its original form. Therefore, I am not inclined to accept the contentions put forward by the learned counsel for the petitioner. When considering the other materials, it is evident that specific overt acts are alleged against the petitioner. Therefore, I do not find this as a fit case in which anticipatory bail can be granted to

the petitioner. The petitioner has to cooperate with the investigation by making himself available for interrogation.

In the result, this application is disposed of with the following directions:-

1) *The petitioner shall surrender before the Investigation officer within a period of two weeks from today, for subjecting himself to interrogation;*

2) *Upon such surrender and after interrogation, if any, the petitioner shall be produced by the investigation officer before the Jurisdictional Magistrate on the very same day of surrender itself, to enable the petitioner to seek bail;*

3) *The Jurisdictional Magistrate upon production of the accused and filing of application for bail, may consider the bail application in accordance with law and, if possible, dispose of the same on the very same day of filing of the said application, subject to such conditions, as deem fit.*

The Bail Application is disposed of with the above directions.

Sd/-

ZIYAD RAHMAN, A.A, JUDGE

R.AV