

# Telma Joseph vs State Of Kerala on 2 August, 2011

**Author: K.T.Sankaran**

**Bench: K.T.Sankaran**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Bail Appl..No. 5744 of 2011()

1. TELMA JOSEPH, W/O.JOSEPH PEREIRA,  
... Petitioner
2. NITHIN CLEMENT, NEETHU HOUSE,

Vs

1. STATE OF KERALA, REPRESENTED BY ITS  
... Respondent

For Petitioner :SRI.SUMAN CHAKRAVARTHY

For Respondent : No Appearance

The Hon'ble MR. Justice K.T.SANKARAN

Dated :02/08/2011

O R D E R

K.T.SANKARAN, J.

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Bail Appln.No.5744 of 2011  
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Dated this the 02nd day of August, 2011

ORDER

This is an application for anticipatory bail under Section 438 of the Code of Criminal Procedure. The petitioners are accused Nos.3 and 2 respectively in Crime No.469 of 2011 of Valiyathura Police Station, Thiruvananthapuram.

2. The offences alleged against the petitioners are under Sections 341, 452, 324 and 379 read with Section 34 of the Indian Penal Code.

3. The de facto complainant is the husband of accused No.3. Accused No.2 is the nephew of accused No.3. The allegation made by the de facto complainant is that on 27.6.2011, the accused persons forcibly entered into his house, attacked him and took away Rupees Five lakhs, mobile phones and ornaments weighing 5.25 sovereigns of gold.

4. Learned counsel for the petitioners submitted that the house and property belongs to the de facto complainant and the third accused jointly. It is alleged that the de facto complainant is having affair with another woman and on account of this, there are disputes between the de facto complainant and the third accused. It is also submitted that on a petition filed by the third accused before the Magistrate's Court, a protection order was granted in her favour under the Protection of Women from Domestic Violence Act. The husband also filed an Original Petition for divorce.

5. When the Bail Application came up for admission on 22/07/2011, the following order was passed:

"5. Taking into account the facts and circumstances of the case and the nature of the offence, I am of the view that before considering the question of granting anticipatory bail, the petitioners should be directed to appear before the investigating officer. Accordingly, there will be a direction to the petitioners to appear before the investigating officer on 27.7.2011.

6. Post on 1.8.2011. It is submitted by the learned Public Prosecutor that the petitioners will not be arrested in connection with Crime No.469 of 2011 of Valiyathura Police Station, till 3rd August, 2011."

6. It is submitted that accused No.3 (first petitioner) complied with the order and that accused No.2 (second petitioner) did not comply with the order. Accordingly, the Bail Application filed by accused No.2 (second petitioner) is liable to be rejected.

7. Taking into account the facts and circumstances of the case, the nature of the offences and also taking note of the fact that the direction in the order dated 22/07/2011 has been complied with by accused No.3 (first petitioner), I am of the view that anticipatory bail can be granted to accused No.3 (first petitioner). There will be a direction that in the event of the arrest of accused No.3 (first petitioner), the officer in charge of the police station shall release her on bail on her executing bond for `10,000/- (Rupees Ten thousand only) with two solvent sureties for the like amount to the satisfaction of the officer concerned, subject to the following conditions:

a) The first petitioner(A3) shall report before the investigating officer between 9 A.M. and 11 A.M. on all alternate Mondays, till the final report is filed or until further orders;

- b) The first petitioner(A3) shall appear before the investigating officer for interrogation as and when required;
- c) The first petitioner(A3) shall not try to influence the prosecution witnesses or tamper with the evidence.
- d) The first petitioner(A3) shall not commit any offence or indulge in any prejudicial activity while on bail.
- e) In case of breach of any of the conditions mentioned above, the bail shall be liable to be cancelled.

The Bail Application is dismissed in so far as it relates to accused No.2 (second petitioner) and it is allowed in the manner as above in so far as it relates to accused No.3 (first petitioner).

Sd/-

K.T.SANKARAN, JUDGE skj True copy P.A. to Judge