

Abdul Latheef vs State Of Kerala on 3 November, 2021

Author: P Gopinath

Bench: P Gopinath

BAIL APPL. NO. 8361 OF 2021

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 3RD DAY OF NOVEMBER 2021 / 12TH KARTHIKA, 1943

BAIL APPL. NO. 8361 OF 2021

ARISING OUT OF THE ORDER IN CRMC 1385/2021 OF DISTRICT COURT &
SESSIONS COURT, KOZHIKODE, KOZHIKODE
CMP 2441/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,NADAPURAM,
KOZHIKODE

PETITIONER/S:

ABDUL LATHEEF
AGED 37 YEARS
S/O. AMMAD, RESIDING AT MADAKKU MOOLAYIL HOUSE, P.O. VELAM-
PERUVAYAL, VIA. KUTTIADI, KOZHIKODE-673 507.
BY ADVS.
S.K.PREMRAJ
C.ANILKUMAR (KALLESSERIL)
V.SARITHA
S.K.SAJU
T.SHAJITH
P.M.MANASH
REENU KURIAN
NEEMA NOOR MOHAMED
JAIN VARGHESE
NAVAS JAN A.

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682 018.
- 2 STATION HOUSE OFFICER
KUTTIADI POLICE STATION, KOZHIKODE-673 508 (NOTICE TO WHOM
IS ALSO SERVED ON THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM).

OTHER PRESENT:

SRI C.N. PRABHAKARAN (SR. PP)
THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03.11.2021,

THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
BAIL APPL. NO. 8361 OF 2021

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ORDER

This is an application for regular bail.

The petitioner is the accused in Crime No.744/2021 of Kuttiadi Police Station, Kozhikode District alleging commission of offences under Sections 308, 324, 341 and 506(ii) r/w 34 of the Indian Penal Code and Section 31 of the Protection of Women from Domestic Violence Act 2005. The allegation against the petitioner is that in violation of an order passed under Protection of Women from Domestic Violence Act, 2005, he prevented the defacto complainant from entering his house and also threatened her using a gun and fired the gun at one of the relatives of the de facto complainant and further that he attempted to hurt the de facto complainant with the gun by poking it against her arm. It is also alleged that had the firing of the gun not been deflected, the gun shot would have resulted the death of the relative of the de facto complainant, against whom it was used.

3. The learned counsel for the petitioner would submit that the petitioner is in custody since 15.10.2021. He submits that the remand of the petitioner is contrary to the directions issued by the Hon' ble Supreme Court in [Arnesh Kumar v. State of Bihar (2014 (8) SCC 273)]. He also submits that the reading of Annexure A2 order through which the learned Sessions Judge has rejected his petition for bail shows that the rejection was mainly on the ground that he had failed to comply with an order passed under Domestic Violence Act, 2005.

4. The learned Public Prosecutor, on instructions, would submit that this is BAIL APPL. NO. 8361 OF 2021 a case where the allegations raised against the petitioner are quite serious. It is submitted that despite there being a residence order by the learned Magistrate under the Domestic Violence Act, he prevented the de facto complainant from entering the house and attacked her and her relatives using a gun. It is also alleged that the mother and the sister of the petitioner had attacked the de facto complainant and her relatives using bamboo sticks. The learned Public Prosecutor submitted that the wound certificate in respect of the defacto complainant shows that she had tenderness on her right elbow, swollen thighs and she had also suffered an injury to her teeth. The learned Public Prosecutor therefore submits that this is not a case where bail can be granted to the petitioner at this stage of the proceedings as the investigation is in progress.

5. Having regard to the facts and circumstances of the case and having perusing the law laid down in Arnesh Kumar (supra), I am of the opinion that the petitioner can be released on bail subject to stringent conditions. The law laid down in Arnesh Kumar (supra) squarely applies as none of the offences alleged against the petitioner are punishable with imprisonment for more than seven years. Therefore, the remand of the petitioner can only be upon satisfaction of conditions set out under Section 41(1)(b) of the Code of Criminal Procedure. Accordingly, this application is allowed and it is

directed that the petitioner shall be released on bail subject to the following conditions.

(i) The petitioner shall execute bond for a sum of Rs.50,000/-

(Rupees fifty thousand only) with two solvent sureties for the like sum to the satisfaction of the jurisdictional Court;

(ii) Petitioner shall appear before the investigating officer in Crime BAIL APPL. NO. 8361 OF 2021 No.744/2021 of Kuttiadi Police Station, Kozhokode District on every Saturday at 11 am until further orders;

(iii) The petitioner shall not attempt to interfere with the investigation, influence or intimidate the victim or any witness in Crime No.744/2021 of Kuttiadi Police Station, Kozhokode District;

(iv) The petitioner shall surrender his passport before the jurisdictional Court. If the petitioner does not have a passport, he shall execute an affidavit to that effect and file the same before the said court within seven days of release on bail;

(v) The petitioner shall not involve in any other crime while on bail. If any of the aforesaid conditions are violated, the investigating officer in Crime No.744/2021 of Kuttiadi Police Station, Kozhikode District may file an application before this Court, for cancellation of bail.

Sd/ P.GOPINATH JUDGE jm/-