

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 04TH DAY OF MAY 2021 / 14TH VAISAKHA, 1943

Bail Appl..No.3192 OF 2021

CRIME NO.171/2021 OF Ernakulam Central Police Station ,
Ernakulam

PETITIONER/S:

- 1 RILGIN V. GEORGE
AGED 35 YEARS
SON OF V.P. GEORGE,
YEARS, VELIYATH HOUSE, VELLUR P.O.,
PAYYANUR, KANNUR DISTRICT.
670307
 - 2 ANOOP ANTONY
AGED 34 YEARS
SON OF P.A. BASIL,
1ST FLOOR, 26/1130,
VALIYATHANIKKAL HOUSE, PETER ASAN NAGAR,
KONTHURUTHY ROAD, THEVARA,
ERNAKULAM, DISTRICT.
682013
- BY ADV. SRI.BABU S. NAIR

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT
OF KERALA
682031
- 2 THE STATION HOUSE OFFICER
AGED -1 YEARS
CENTRAL POLICE STATION, ERNAKULAM,
ERNAKULAM DISTRICT
682031

B.A.No.3192/2021

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R1 BY PUBLIC PROSECUTOR

OTHER PRESENT:

P.P.SMT.SREEJA.V

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 04.05.2021, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.3192 of 2021

Dated this the 4th day of May, 2021

O R D E R

This Bail Application filed under Section 438 of Criminal Procedure Code (Cr.P.C.) was heard through Video Conference.

2. The petitioners are the accused in crime No.171/2021 of Ernakulam Central Police Station. The above case is registered against the petitioner and others alleging offences punishable under Section 143, 147, 148, 353, 323, 294(b) r/w 149 of the Indian Penal Code.

3. The prosecution case in brief is that the defacto complainant who is working as Circle Inspector of Police, Backel Police Station had come to the High Court in connection with an enquiry being conducted against him about an incident on the basis of a complaint filed by one of the accused in this case regarding a traffic incident in which

that accused was taken into custody by the Police and ill treated from Cherthala Police Station. He was a lawyer. Several Advocates gathered before the Cherthala Police Station for the release of that accused. According to the lawyers, the Police ill treated that lawyer without any reason. In connection with the same, an enquiry was being conducted by the higher Police Officers and the Advocate General on 15.02.2021 at the office of the Advocate General within the premises of the High Court. The lawyer who was ill treated by the Police and the Police Officer was present for attending the enquiry. After the enquiry, on his way out of the High Court premises, by the Police Officer, the lawyers including the petitioners formed an unlawful assembly, committed riot armed with deadly weapons and in the prosecution of the common object hurled abuses at him and deterred him from performing his duty as a public servant and also assaulted him.

4. Heard the learned counsel for the petitioners and the Public Prosecutor. The counsel for the petitioners

submitted that the only non-bailable offence alleged against the petitioners is under Section 353 IPC. The counsel submitted that even if the entire allegations are accepted the offence under Section 353 IPC is not made out. The counsel submitted that Section 353 IPC is included with a *malafide* intention to implicate the lawyers in non-bailable offence. The counsel submitted that the registration of the case with Section 353 IPC by the Police is illegal. Heard the learned Public Prosecutor also.

5. The only non-bailable offence alleged against the petitioners is under Section 353 IPC. Section 353 IPC is extracted herein under:-

353. Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

6. To attract Section 353 IPC, one of the main ingredients is that the assault or criminal force should be to deter the public servant who was discharging his official duty. Admittedly, the defacto complainant was attending an enquiry based on a complaint filed by a lawyer. At no stretch of imagination, it can be said that the defacto complainant was in lawful discharge of his duty as a public servant, at the time of the alleged incident. Simply because he is in uniform, Section 353 IPC will not attract. Then, how Section 353 IPC is added in this case is a question. I think there is some force in the argument of the petitioners that Section 353 IPC is added just to implicate lawyers in non-bailable offence. The superior officers should look into this matter and take appropriate action in accordance to law. I do not want make any further observation about the merit of the case. I leave it there. The Officer is free to conduct an enquiry untrammelled by any observation in this order. I made certain observation only to decide this bail application. According to me, if the petitioners are arrested, they should be released on self bond.

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Therefore this Bail Application is allowed. If the petitioners are arrested in connection with Crime No.171/2021 of Ernakulam Central Police Station, they shall be released on bail on executing a self bond for Rs. 50,000/- (Rupees fifty thousand only).

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

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