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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

FRIDAY, THE 25TH DAY OF JUNE 2021 / 4TH ASHADHA, 1943

BAIL APPL. NO. 3959 OF 2021

CRIME NO.397/2021 OF MAVELIKKARA POLICE STATION, ALAPPUZHA

PETITIONERS/ACCUSED 1 AND 2:

- 1 ABHILASH R CHANDRAN
AGED 31 YEARS
S/O. T. RAMACHANDRAN
RESIDING AT ABHILASH BHAVAN,
UMBERNADU, MAVELIKARA P.O.
ALAPPUZHA, PIN - 690101

- 2 AMAL MURALI
AGED 24 YEARS
VALUTHARAPADEETTATHIL,
ARANOOTTIMANGALAM, KALLUMALA P.O.
ALAPPUZHA, PIN - 690110
BY ADVS.
P.VIJAYA BHANU (SR.)
NIRMAL V NAIR
P.M.RAFIQ
MANU TOM
SRUTHY N. BHAT

RESPONDENTS/STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM, PIN - 682031
- ADDL.R2 DR. RAHUL MATHEW
AGED 37 YEARS
S/O KOSHY P MATHEW, JUNIOR CONSULTANT,
DEPARTMENT OF SURGERY, DISTRICT HOSPITAL,
THAZHAKKARA, MAVELIKARA, PIN - 690102.
- IS IMPEADED AS PER ORDER DATED 10/06/2021 IN
CRL.M.A.NO. 1/2021.
- R1 BY SRI. SANTHOSH PETER, SR. PUBLIC PROSECUTOR
R2 BY ADV. P. SREEKUMAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22.06.2021,
THE COURT ON 25.06.2021 DELIVERED THE FOLLOWING:

ORDER

This is an application filed under Section 438 of the Code of Criminal Procedure by the accused in Crime No. 397/2021 of Mavelikkara Police Station in Alappuzha District. The crime was registered on 14.05.2021 alleging offence punishable under Sections 341, 294(b), 323, 332 read with 34 of the Indian Penal Code and Sections 3 and 4 of the Kerala Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012.

2. The crime was registered on the basis of the First Information Statement given by Dr. Rahul Mathew who is working as Junior Consultant (Surgery) in the Government Hospital, Mavelikkara. Going by the statement, he had been on night duty in the night of 13.05.2021. The alleged incident had happened at 7.30 A.M. on 14.05.2021; at about 04.15 A.M., a lady by name Laly was taken to the casualty for treatment. As it was reported that she was tested covid positive undergoing quarantine, was directed to be taken to Triage (an earmarked portion of the hospital attending covid positive patients). He had rushed to the place; he was not even wearing the PPE kit; taking into consideration the urgency of

the matter, he attended the patient. But at that time, she had died. Alleging that there was delay in attending her, the son of the patient abused him and tried to manhandle him. He told him to make the complaint, if any, before the Superintendent. He also took steps to release the body and also informed the police. Later at about 7.30 A.M., two persons entered his room, abused him, caught hold of his neck and slapped on his face. The patient had died due to covid complications. Even though her oxygen level was low, she was not taken to hospital on time. There was absolutely no negligence on his part or staff members of the hospital. If a person is tested covid positive such a patient can be taken to the hospital only after intimating the health workers; himself and other members of the staff were not aware of the health complications of the deceased, that when he had seen the patient she had died.

3. In other words, the prosecution case is that after a covid positive patient was taken to the hospital at the wee hours of 14.05.2021, alleging that there was negligence on the part of the defacto complainant and other staff of the hospital, petitioners were abusing and manhandling the defacto complainant. But according to petitioners, the 1st petitioner is a Civil Police Officer on probation in

Kerala Police working on deputation in Kochi Metro. According to them, the entire incident had happened due to the shock of death of his mother. His mother did not get prompt medical attention when she was taken to hospital in a breathless condition. After his sister's marriage about ten days before, mother had tested positive and was undergoing quarantine at home. On 14.05.2021, early morning, she developed serious breathing problem and then was rushed to the General Hospital, Mavelikkara. But she did not get prompt medical attention; even after 10 to 15 minutes of their reaching the hospital, attention was not given; finally only with the help of an aunt of the 1st petitioner, who is working as a helper in the hospital, oxygen was given. At the time when the doctor and nurses came, the mother had died. When he expressed sadness and said that prompt medical attention would have saved his mother, the defacto complainant taunted him and asked him to file a case; there followed a verbal altercation; however, the matter was settled. But after some time, the defacto complainant again taunted the petitioners and then a tussle followed, but no injuries were caused as alleged. The act of the 1st petitioner was only due to the sudden shock caused by the death of his mother. The crime was registered

under the influence of the doctor's union. The custodial interrogation of the petitioners is not necessary.

4. The defacto complainant got himself impleaded as the additional 2nd respondent. Going by his version, the said Laly was tested covid positive ten days back and was undergoing home quarantine. Even though she was advised to be admitted in a covid care center, her family opted to retain her at home. It is understood that even when the oxygen level had fallen, they were adopting indigenous methods by lying down on the chest. She was taken to hospital only after the condition had worsened, when the pulse oximeter failed to record the reading. The defacto complainant was on night duty in the previous night. Knowing about the production of such a patient and when informed that the patient was covid positive, she was asked to be taken the Triage. On understanding the seriousness of the situation, even without putting on a PPE kit, at the risk of his life, he had attended the patient, but by the time she was no more.

5. According to the 2nd respondent, at 7.30 A.M., the petitioners barged into his duty room, caught hold of his neck and slapped on his face; he sustained injuries. Therefore, he has

opposed the application for anticipatory bail.

6. I heard the learned counsel for petitioners, learned counsel for the 2nd respondent and the learned Public Prosecutor.

7. The respective arguments were repeated by the learned counsel. According to the learned counsel for petitioners, even though negligence on the part of the defacto complainant and hospital staff was patent, the defacto complainant was abusing the 1st petitioner and his relatives and there followed a tussle. According to him, the 1st petitioner is a civil police officer on probation and the second petitioner is a student and that their custodial interrogation is not necessary for the case.

8. The learned counsel for the 2nd respondent seriously opposed the application. According to him, the mother of the 1st petitioner was in fact brought dead to the hospital and even at the risk of his personal safety, the defacto complainant was attending her. Still he suffered crushing injury on his throat and beat on his face; the 1st petitioner though a police constable is not prepared to abide the law.

9. The learned Public Prosecutor also opposed the application. According to him, medical officers like the second

respondent, in spite of their diligent and devoted discharge of duty during the period of pandemic are at the receiving end. That this kind of incidents are on the rise and therefore, petitioners do not deserve any sympathetic consideration. From the averments in the petition, it is evident that atleast the 1st the petitioner was part of a tussle occurred in the room of medical officer. This court can understand that the mother of the 1st petitioner had died after becoming covid positive. The version of the respondents indicate that she was under home quarantine, in spite of direction by the health workers, they refused to shift her to a covid care center and was taken to the hospital only when her condition had worsened, when she had suffered breathlessness.

10. The incident had happened in an emotionally charged stage. Still the action of the petitioners cannot be justified. Even if they had a case that there was negligence on the part of the medical officer and hospital staff, that cannot be addressed by showing muscle power and manhandling the doctor in charge. The version of the second respondent indicates that on realising the seriousness of the situation, he had rushed to the place where the patient was brought even risking his own life without wearing a PPE kit.

Thereafter, he suffered indignation and also physical assault. The 1st petitioner is not an ordinary person but is part of the police department, a uniformed force, is expected to show utmost discipline. But he was taking law into his hands and was thrashing the medical officer in his room.

11. We cannot forget the sacrifices and devotion to the duty exhibited by the medical officers and health staff especially during the trying times when the pandemic condition was at its peak. The worsening situation could be bridled in our State only because of the devoted discharge of duties in a most religious manner by the medical staff. As rightly pointed out by learned Public Prosecutor, laymen who do not understand the technicalities of the situation are might have carried away on misinformation and misconceptions. The huge pressure of work in a Government hospital is seen to be believed. It is quite unfortunate that in spite of attending the duties in most diligent manner, they have to suffer such indignation which go to the extent of suffering physical and verbal assault. But all the same, these are isolated incidents, which cannot be generalised. The incident had happened in a charged atmosphere.

12. I have perused the case diary. The wound certificate

indicates that the second respondent has suffered the following injuries:-

- a) pain and swelling on the sides of face, ear and neck;
- b) blocking sensation, vertigo and headache;
- c) TMJ pain on left ear;
- d) contusion and redness cheek, mastoid area and ear lobes;
- e) contusion over anterior aspect of neck ;
- f) contusion over right and left anterior aspect of chest;

That means, he was caught hold of his neck and was slapped on the cheek causing severe hurt.

13. All the same, the larger questions to be considered in an application under Section 438 of the Cr.P.C are the nature of the offence, the role of the person, likelihood of his influencing the course of investigation or tampering with evidence, likelihood of his fleeing from justice, possibility of his involving or repeating similar offences etc. The court is also very much considerate whether arresting and custodial interrogation of the offender is imperative.

14. Here the 1st petitioner is a Civil Police Officer on probation. It has been pointed out that on reporting the incident, he

has already been placed under suspension. The second petitioner is a student.

15. After considering rival contentions and the materials on record, I am not convinced that this is a fit case requiring custodial interrogation. Prima facie, it does not seem that anything requires to be elicited by their custodial interrogation. As already noticed, the 1st petitioner though under suspension is a member of the police force. The prosecution has no contention that he may flee from justice and will not make himself available for investigation and trial, if found necessary. Therefore, in the event of arrest, the petitioners shall be released on bail on condition that they shall execute bond for Rs.50,000/-(Rupees Fifty Thousand Only) each with two solvent sureties each for the like sum to the satisfaction of the Investigating Officer; they shall co-operate with the investigation and shall make themselves available as and when necessary; they shall not involve themselves in such crime during the period of bail.

The bail application is allowed as above.

Sd/-
K. HARIPAL

JUDGE