

Bail Appl.No.146 of 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 28TH DAY OF APRIL, 2020 /8TH VAISAKHA, 1942

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Crime No. 162 of 2020 of Hosdurg Police Station (Kasargod District)

**Petitioners/ Accused 1 to 3:**

1. K. Muhammed Aslam, aged 32 years  
S/o. Muhammed Palayi  
Palayi House, Bava Nagar  
Kanahangad Kadappuram  
Kanhangad P. O  
Hosdurg Taluk, Kasargod District
2. Muhammed Kunhi, aged 52 years  
S/o. M. Youseff  
Vellumadu House,  
Kanahangad Kadappuram  
Kanhangad P. O  
Hosdurg Taluk, Kasargod District
3. Muhammed Muhasin, aged 21 years  
S/o. Muhammed Kunhi  
Vellumadu House,  
Kanahangad Kadappuram  
Kanhangad P. O  
Hosdurg Taluk, Kasargod District

By Adv. Sri. Rahul Sai and Adv. Smt. Neethu Prem

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**Respondents /Complainants**

1. State of Kerala, Rep. by Public Prosecutor  
High Court of Kerala, Ernakulam

2. The Station House Officer  
Hosdurg Police Station

BY PUBLIC PROSECUTOR SMT.PUSHPALATHA M.K

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
28.04.2020, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**ORDER**

This is an application for pre-arrest bail filed under Section 438 of the Code of Criminal Procedure.

2. The petitioners are said to be the accused 1 to 3 in CR No. 162/2020 of the Hosdurg Police Station. The petitioners are alleged to have committed the offences punishable under Sections 341, 323, 324 and 308 of the Indian Penal Code.

3. The prosecution allegation, in brief, is that; the petitioners wrongfully restrained the de-facto complainant and attacked him with a knife in front of the 1<sup>st</sup> petitioner's house. Thus the petitioners have committed the above offence.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor through video-conferencing.

5. The learned counsel for the petitioner argued that the petitioners are absolutely innocent of the accusations leveled against them. The petitioners and injured are neighbours. In fact it was the injured who caused the dispute,

and that the 1<sup>st</sup> petitioner's wife has lodged a complaint with the Police, which is registered as Cr.No. 163/2020. The petitioners are ready and willing to co-operate with the investigating officer. The petitioners custodial interrogation is unnecessary. Hence the petitioners may be granted an order of pre-arrest bail.

5. The learned Public Prosecutor, on instructions, submitted that 3<sup>rd</sup> petitioner is not an accused in the crime. Hence the application as against the 3<sup>rd</sup> petitioner is unnecessary. She submitted that no major injuries have been caused on the injured. She also admitted that there is a counter case filed by the wife of the 1<sup>st</sup> petitioner as against the injured. She also submitted that, if the petitioners are granted pre-arrest bail, they may be directed to co-operate with the investigation.

6. On a cumulative appreciation of the facts and circumstances of the case, particularly the fact that custodial interrogation of petitioners 1 and 2 is not necessary; that there is counter case filed by the wife of the 1<sup>st</sup> petitioner, and that

the petitioners custodial interrogation is not necessary and no recovery is to be effected, I am convinced that this is a fit case to grant an order of pre-arrest bail as provided under Section 438 of Code of Criminal Procedure in favour of petitioners 1 and 2. The application in respect of the 3<sup>rd</sup> petitioner is unnecessary as he is not an accused, hence the same is dismissed recording the submission of the learned Public Prosecutor.

7. In the result this bail application is allowed. The petitioners 1 and 2 are directed to surrender before the Investigating Officer on or before 08/05/2020. Upon their surrender, the Investigating Officer shall release the petitioners 1 and 2 on bail, subject to the following conditions.

- i) The petitioners shall be released on bail on executing a bond for a sum of Rs.50,000/ (Rupees Fifty thousand only) each, with two solvent sureties for the like sum each in the event of their arrest by the police in connection with the crime in the bail application.

(ii) The petitioners shall make themselves available for interrogation before the Investigating Officer as and when required by him. They shall cooperate with the investigation of the case.

(iii) The petitioners shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

iv) The petitioners shall not commit any offence while on bail.

v) Needless to state that if the petitioners violate any of the conditions in this order, the Investigating Officer would be at liberty to move the jurisdictional Court and seek for cancellation of this bail order.

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With the above observations, this bail application is allowed.

**C.S.DIAS, JUDGE**

SM