

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHIRCY V.

TUESDAY, THE 6TH DAY OF JULY 2021 / 15TH ASHADHA, 1943

BAIL APPL. NO. 4347 OF 2021

CRIME NO. 4347 OF 2021 OF KEESHVAIPUR POLICE STATION

PETITIONERS/ACCUSED:

- 1 MATHEWS KALLUPURA
AGED 46 YEARS
KALLUPURAYIL HOUSE, ANICAD P.O, MALLAPPALLY, PIN -
689589
- 2 SHEEBA JOSEPH
AGED 46 YEARS
ILLIMOOTTIL HOUSE, ANICAD .P.O, MALLAPPALLY, PIN -
689589
- 3 JOSEPH ISAC
AGED 50 YEARS
ILLIMOOTTIL HOUSE, ANICAD P.O, MALLAPPALLY, PIN -
689589

BY ADVS.
T.P.PRADEEP
MINIKUMARY M.V.
AJAI JOHN
K.RAMACHANDRAN

RESPONDENT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, PIN - 682031
- 2 DR.REETHU LIZBATH THOMAS
AGED 28 YEARS
D/O RAJU C ABRAHAM, CHIRATTEPARAMBIL HOUSE, VELLOOR PO,
PAMPADY, KOTTAYAM, PIN 686501
IS IMPLEADED AS ADDL R2 AS PER ORDER DATED 30/6/2021
IN CRL MA 1/2021

BY ADVS.
PUBLIC PROSECUTOR
P.SREEKUMAR
SOORAJ T.ELENJICKAL

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OTHER PRESENT:

C.N.PRABHAKARAN- SR.P.P

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02.07.2021, THE COURT ON 06.07.2021 PASSED THE FOLLOWING:

ORDER

DATED THIS THE 6TH DAY OF JULY, 2021

Apprehending arrest in connection with Crime No. 651 of 2021 of Keezhvaipur Police Station registered for the offences punishable under Sections 294(b), 353, 506(i) and 34 of Indian Penal Code and Section 3 of the Kerala Health Care Service Persons and Health Care Service Institutions (Prevention of Violence and Damage to Property) Act, 2012, the petitioners have preferred this application under Section 438 of the Code of Criminal Procedure.

2. The prosecution case in short is as follows:

The defacto complainant is a doctor attached to the Taluk Hospital, Mallappally. On 21.05.2021 at about 1.55 p.m., a patient by name John P John was brought to the hospital in an

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unconscious stage. Though the duty doctor provided emergency medical care and attention, he died by 2.20 p.m. As per the procedure the duty doctor had intimated the death of the patient to the police. The body was handed over to the family members by 5 p.m after completing the formalities. But the petitioners showered abuses on the duty doctor for giving intimation to the police thereby causing delay in handing over the dead body to the relatives. They also insulted and obstructed her from discharging her official duties and thus committed the aforesaid offences.

3. The learned counsel for the petitioners raised a plea of false implication and contended that the death of the patient was due to the absence of timely medical care and attention by the duty doctor. When the relatives of the patient alleged negligence and urged for intimation to the police authorities, the 1st petitioner, who is the Grama Panchayath member of Ward 13, the 2nd

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petitioner, former Standing Committee Chairperson of Anicad Grama Panchayat and the 3rd petitioner a social worker, intervened to console and pacify them to withdraw from their complaint against the doctor. But after two days the hospital staff had staged a dharna anticipating legal action at the instance of the relatives of the deceased. Thereafter, the police has registered the case on the complaint of the defacto complainant. But in fact the petitioners have not committed the offences as alleged by the prosecution.

4. The learned Public Prosecutor opposed the application contending that the allegations leveled against the petitioners are absolutely correct. In fact the duty doctor was abused and threatened by these petitioners and they also attempted to deter her from discharging her official duties and she then preferred a complaint before her higher official on the very same day and then lodged the complaint before the police

and thus the FIR was registered. The petitioners who are the elected members and social workers, are not supposed to abuse or exhibit unruly behavior towards the duty doctor and staff who attended and provided medical care to the patient when he was brought to the casualty. So, the allegations levelled against them are grave and serious in nature, is the stand of the learned public prosecutor.

5. The defacto complainant, who is impleaded as the 2nd respondent had vehemently opposed the application contending that she was abused by the petitioners in filthy language while on duty and obstructed her from discharging her duties, causing much mental agony just for intimating the death of the patient to the police as per the procedure. The patient was brought in a critical stage with low BP and feeble pulse and he was also unconscious. He was given emergency attention and care including CPR, but

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she could not save the patient. The patient was brought to the hospital at 01.55.p.m and death occurred at 02.20 p.m. Therefore she had to intimate death to the police as there are certain formalities to be complied with. After the routine formalities, the dead body was handed over to the relatives by 5 p.m. But the petitioners infuriated by her request to wait for the arrival of the police abused and threatened her and even shouted towards her saying she can take the dead body to her home .In fact they wanted the body to be handed over to the relatives without the intervention of police. Their repulsive and unruly behavior towards her had obstructed her from discharging her official duty. With this submission, the application is vehemently opposed by the learned counsel for the defacto complainant.

6. The 1st petitioner is the Grama Panchayat member of Ward 13 and the 2nd petitioner

is the former standing committee chairperson and the 3rd petitioner is a public/social worker. The deceased was a member of Ward No.13. The records reveal that he was brought to the hospital by 1.55 p.m in a critical condition. Though emergency medical aid was provided, his life could not be saved. Apparently the petitioners have abused, threatened and caused obstruction to the defacto complainant in discharging her duties mainly because the dead body was not handed over to the relatives of the deceased immediately after his death without intimating the police. In this bail application the main question to be looked into is whether the petitioners are entitled to get pre-arrest bail as prayed for.

7. It is most significant to note that doctors as well health workers are considered as front line warriors during this pandemic period. During the second wave of pandemic as per the statistics provided by IMA, in India more than

798 doctors have lost their lives as they were fighting against the deadly pandemic as part of their duty by attending and providing treatment to Covid affected patients round the clock. Our small state have lost 24 doctors apart from number of health workers. The doctors and health workers are front line warriors and it is the common knowledge that they are rendering selfless services round the clock to save the precious life of Covid affected patients. But unfortunately doctors and health care service workers are attacked and abused quite often despite an act was enacted in addition to the law in force to prohibit violence against them. If death occurred to a patient due to negligence of a doctor or hospital authorities, definitely the relatives are entitled to seek remedies before the proper forum in the suitable manner. But attacking doctors and hospital staff and causing damages to the hospital have become the present

trend of our country. It is to be borne in mind that due to the outbreak of Covid 19 we are living in a pandemic situation. Adequate and sufficient steps to ensure the life of public are taken by authorities with the full co-operation of health workers. Any kind of adversarial approach from any corner would per se create extreme hardship to the general public. Here, the defacto complainant, a lady doctor was abused and threatened by the petitioners who claim as social workers. Due to the ruckus erupted by them she was obstructed from discharging her official duties. Of course, she was not manhandled by the petitioners. Indulging in such activities towards any doctor or health workers while discharging their duties in a place like hospital would definitely cause great mental trauma and agony to them. It would certainly shake their morale and confidence. It is also a fact that in order to greet the doctors, Doctors' Day is being celebrated in our

country. But if they are treated like this, then there will be no significance in greeting doctors by celebrating Doctors' Day. Especially during this pandemic period they are rendering more valuable and beneficial services to the public than usual. But they are being abused and attacked at their work place. Untoward incidents are happening day by day which would affect the morale of doctors and health care service persons to a considerable extent. Still they are discharging their duties. The wayward and unacceptable behavior from the side of the petitioners and incidents of this sort from any corner should be deprecated.

8. Here, in this case, the death occurred after the patient was brought to the hospital. He was an young man. In such cases, certain formalities have to be followed by the hospital authorities before handing over the body to the relatives. The first thing is to give intimation

to the police. Sometimes postmortem examination will have to be conducted in order to find out the cause of death. So, on receipt of the intimation, the police has to reach the hospital and comply with certain formalities before handing over the dead body to the relatives. There is every possibility to have some sort of delay in complying with these formalities. But for that a doctor cannot be abused or the public cannot obstruct the doctor from discharging his/her duties. The persons arraigned as the accused are social workers as claimed by them. So, normally it is not expected from a social worker, to behave in an unruly manner in a hospital. Their position as an elected member of the Panchayat and social worker will only intensify the gravity of the offences alleged against them. Here, the doctor is a young lady. Her first information statement reveals that she was abused, insulted and threatened by the 1st petitioner along with the

other accused. They have also caused obstruction to her from discharging her official duties. Of course, she was not manhandled by them. But verbal abuses, insult and intimidation are equal or more than a physical injury caused to a person. So such an incident especially from the side of an elected panchayat member or a social worker is not expected in a civilized society.

9. Anticipatory bail is an extraordinary relief which could be granted sparingly. Here, when the allegations are grave and serious in nature, granting of pre-arrest bail will definitely give a 'wrong' message to the right thinking people. After committing this sort of offences towards a doctor especially during this pandemic period, by an elected member or a social worker and leaving the court with an order of pre-arrest bail will definitely give a green signal and encouragement to such wrong doers. Indiscriminate grant of bail either

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regular or anticipatory, will shake the confidence of the public in judicial system. There is also every likelihood of the petitioners who are well connected using political power to intimidate the independent witnesses to the prosecution, if granted pre-arrest bail.

In view of the above facts, I strongly feel that this is not a fit case in which the discretion of this court can be exercised in favour of the petitioners to grant pre-arrest bail as requested by them.

Dismissed.

Sd/-

**SHIRCY V
JUDGE**

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