

**HIGH COURT OF KERALA****Bench: Justice A. Badharudeen****Date of Decision: 28<sup>th</sup> May 2024**

CRIMINAL WRIT PETITION NO. 385 OF 2024

BAIL APPLICATION NO. 3364 OF 2024

**DR. HARITHA H.S. ...PETITIONER****Versus****STATE POLICE CHIEF & OTHERS ...RESPONDENTS****Legislation:**

Sections 354, 294(b), 323 of the Indian Penal Code (IPC)

Section 4(1)(i) of the Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Amendment Act, 2023

Section 438 of the Criminal Procedure Code (Cr.P.C)

Article 226 of the Constitution of India

**Subject:** Criminal writ petition and bail application arising out of the alleged assault and molestation of Dr. Haritha H.S. at her clinic by Joseph Chacko. The writ petition seeks to transfer the investigation to a higher-ranking officer, while the bail application requests anticipatory bail for the accused.

**Headnotes:**

Criminal Law – Offences under Sections 354, 294(b), 323 IPC and Section 4(1)(i) of Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Amendment Act, 2023 – Petition for transfer of investigation and anticipatory bail – High Court’s dismissal of bail application and writ petition – Importance of custodial interrogation emphasized by Court – Judicial scrutiny upheld the need for arrest to ensure thorough investigation – Dismissal of anticipatory bail based on severity of allegations and existing evidence [Paras 1-12].

Evidence Evaluation – Court evaluated statements and case diary indicating prima facie evidence supporting the complainant’s allegations – Court found allegations credible and necessitated further investigation, rejecting anticipatory bail – Judicial scrutiny confirmed investigation was conducted appropriately without bias, but with an emphasis on necessity for arrest and custodial interrogation [Paras 9-13].

Decision – Dismissal of Bail Application and Disposition of Writ Petition – Held – Bail application was dismissed due to serious nature of allegations and necessity for custodial interrogation – Writ petition for transfer of investigation dismissed as current investigation was deemed satisfactory – Defacto complainant given liberty to re-approach the Court if further issues with investigation arise. [Para 13].

**Referred Cases:**

- Dinesh Bhaskar v. State of Kerala 2022 SCC Online Ker 1548
- Deepak Kumar v. State of Kerala 2021 SCC Online Ker 897
- Vishal Dubey v. State of Madhya Pradesh 2020 SCC Online MP 2331

**Representing Advocates:**

**Adv. C.K. Mohanan for the petitioner**

**Adv. Shaijan C. George, Adv. Vinai John, Adv. Tincy Maria Scaria for the accused**

**Public Prosecutor: M.P. Prasanth, Sr. PP: Renjit George for the State**

**JUDGMENT/ORDER**

The writ petition (Crl) has been filed under Article 226 of the Constitution of India and the petitioner herein is the defacto complainant in Crime No.212 of 2024 of Mannanthala Police Station. The prayers in the writ petition are as under:

- I. To issue a writ of mandamus, or order, or direction to the respondents 1 to 2 to immediately handover/entrust the investigation

of the Crime No.212/2024 of the Mannanthala Police Station to a upright Police Officer of the higher rank, preferably an officer of the IPS cadre.

II. Any other appropriate relief to the Petitioner as this Hon'ble Court may deem fit and proper in the interest of justice.

III. To dispense with the production of the translated copy of the vernacular documents produced in the writ petition;

2. The bail application has been filed under Section 438 of the Code of Criminal Procedure, seeking pre-arrest bail by the sole accused in the above crime, where the prosecution alleges commission of offences punishable under Sections 354, 294(b) and 323 of the Indian Penal Code as well as under Section 4(1)(i) of the Kerala Healthcare Service Persons And Healthcare Service Institutions (Prevention of Violence and Damage to Property) Amendment Act, 2023.

3. The petitioner in the writ petition will be referred as the 'defacto complainant' and the petitioner in the bail application will be referred as the 'accused' hereinafter.

4. Coming to the facts of the cases, Crime No.212 of the 2024 has been registered as on 18.03.2024 on the basis of the FIS given by the defacto complainant. The allegation in the FIS is that, at 12.00 noon on 18.03.2024, while the defacto complainant was at her clinic, a person aged about 50 years entered into the consultation room of the doctor and demanded 'Evakalp' tablet. When he was informed that the same was not in stock, he abused the defacto complainant using filthy words and caught hold on her right breast and beat on the left breast. When the defacto complainant resisted the same, the accused snatched and broke her thali chain. Then, the above person pushed her down and she was rescued by the medical representatives and a patient. Recording the statement of the victim FIR was registered alleging the above said offences.

5. In the bail application, the accused seeks anticipatory bail raising contention that he is absolutely innocent and there was an exchange of words between the defacto complainant and the accused, when the doctor reported that 'Evakalp' tablet prescribed for his daughter Soja R. Joseph, who consulted the doctor on

17.01.2024, for whom the second tablet prescribed was Evakalp. The learned counsel for the accused pointed out the above fact while highlighting that the accused is innocent and the allegations are false. He also submitted that since the punishment provided for the offences alleged to be committed by the accused is less than seven years, he was given 41A Cr.P.C. notice by the Police and in response to the same, he appeared before the Police and Annexure.A5 is the acknowledgment given in this regard to show that he appeared before the Police in between 10 – 12 hours on 21.03.2024. The learned counsel for the accused offered co-operation in the matter of investigation, while pressing for anticipatory bail to the accused.

6. Zealously opposing the bail plea at the instance of the accused, the learned counsel for the defacto complainant would submit that the accused is a wealthy person having alliance with all political parties and he willfully obstructed the duty of the defacto complainant who has been practicing Ayurvedic medicine and subjected her to molestation attracting the offences alleged in the FIR. He pointed out that arrest and custodial interrogation of the accused are necessary to accomplish meaningful investigation. According to him, even though, soon after the occurrence, the accused was entrusted to the Police by the people in the locality, the Vanitha Assistant Sub Inspector of Police, released him without recording arrest, for which, a separate complaint also was lodged by the defacto complainant.

7. The learned Public Prosecutor opposed grant of bail to the accused and produced the case diary for perusal of this Court to see the progress of investigation. The learned Public Prosecutor also submitted that the prayers in the writ petition cannot be allowed, since as per the records, proper investigation has been going on. He also stated that 164 statement of the defacto complainant was recorded and CCTV footages also were taken into custody.

8. In this matter, the accused filed CrI.M.C. No.802/2024 before the Additional Sessions Court-II, Thiruvananthapuram, seeking anticipatory bail and the learned Additional Sessions Judge, after elaborately hearing the matter, dismissed the same.

9. On perusal of the statement given by the defacto complainant, it is stated that, at 12.00 noon on 18.03.2024, while she was at her clinic, a person aged about 50 years entered into the consultation room of the doctor and demanded 'Evakalp' tablet and when he was informed that the same was not in stock, he abused her using filthy words and caught hold on her right breast and beated on the left breast and when she resisted the same, the accused snatched and broke her thali chain. On perusal of the case diary, the overt acts at the instance of the accused are foreseeable and the offences punishable under Sections 354 of IPC as well as under Section 4(1)(i) of the Kerala Healthcare Service Persons And Healthcare Service Institutions (Prevention of Violence and Damage to Property) Amendment Act, 2023, are non-bailable.

10. On perusal of the case diary along with report of the Investigating Officer Sri.Biju K.R., Police Inspector, Mannanthala Police Station, the investigation has been progressing and it was found on investigation that the allegations of the defacto complainant are true. He also reported that it is necessary to record statements of the other witnesses as part of investigation and it is necessary to arrest the accused also.

11. In this context, it is relevant to refer the trend of abusing, assaulting and manhandling doctors and hospital staff for flimsy reasons and the said acts have now become a common practice. Recently, when repeated instances of such nature were noticed by the legislature, the legislature was forced to amend the Kerala Healthcare Service Persons And Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, in the year 2023, by incorporating Section 4, which provides for punishment for such acts and making the offence as non bailable. Even after introduction of the amendment, incorporating non bailable penal provisions, the attack against doctors and hospital staff not seen reduced and the present case is a typical example for the same. Here, the specific allegation as stated in paragraph No.4 of this order would go to show that the prosecution case is well made out, prima facie, and the Investigating Officer also wanted to arrest the accused for effectively investigating the case.

12. Learned Public Prosecutor and the learned counsel for the defacto complainant urged for arrest and custodial interrogation of the accused to effectuate meaningful investigation, in a case involving serious allegations. In such a case grant of anticipatory bail would impede the investigation. Therefore, the anticipatory bail plea at the instance of the accused cannot be considered and the same is only to be dismissed.

13. Coming to the prayers in the writ petition, mainly, to entrust the investigation of this crime to an upright Officer, the materials produced before this Court would go to show that the investigation is going on without scope for allegations, though the Investigating Officer failed to arrest the accused. In this connection, it is to be noted that periodically the accused filed anticipatory bail applications before the Sessions Court and this Court and that may be the reason for stalling of arrest of the accused. Therefore, this Court is of the view that entrustment of the investigation to another Officer is not warranted at this stage and the present Investigating Officer can continue the investigation. The Investigating Officer is directed to effectuate fair and unbiased investigation in this matter.

In the result, B.A. No.3364 of 2024 stands dismissed and W.P. (Crl) No.385 of 2024 stands disposed of as indicated above. It is made clear that the defacto complainant is at liberty to approach this Court, if she feels again that the investigation is not on the proper line.

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