

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 27TH DAY OF JANUARY 2023 / 7TH MAGHA, 1944

BAIL APPL. NO. 9174 OF 2022

PETITIONERS:

- 1 PRAKASHAN,
S/O. CHANDRAN, AGED 50 YEARS
PALAKUNNIN NIRATHIN THAZHE (H),
MUTHUKAD (P.O.), PERUVANNAMOOZHY (VIA)
KOZHIKODE (DIST), PIN - 673528
- 2 ANEESH
AGED 31 YEARS, S/O NARAYANAN
KULAMULLA PUTHALATH (H)
MUTHUKAD (P.O.), PERUVANNAMOOZHY (VIA)
KOZHIKODE (DIST)., PIN - 673528
- 3 RAGEESH E.K,
AGED 36 YEARS, S/O KRISHNAN
EZHUTHACHAN KANDI (H)
MUTHUKAD (PO), PERUVANNAMOOZHY (VIA),
KOZHIKODE (DIST), PIN - 673528

BY ADV.SRI. AASHIQUE AKTHAR HAJJIGOTHI

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, PIN - 682031
BY ADV.SMT.SHEEBA THOMAS

THIS BAIL APPLICATION HAVING COME UP FOR
ADMISSION ON 27.01.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

'CR'

A. BADHARUDEEN, J.

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Bail Appln. No.9174 of 2022

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Dated this the 27th day of January, 2023

ORDER

This bail application has been filed under Section 438 of the Code of Criminal Procedure seeking the relief of pre-arrest bail.

2. The petitioners are accused Nos.2 to 4 in OR No.03 of 2022 on the files of Peruvannamoozhy Forest Station, Kozhikode District.

3. Heard the learned Counsel for the petitioners and the learned Public Prosecutor.

4. The prosecution case to be read out from the case diary is that on 22.10.2022, based on a secret information that 1st accused stored Sambar deer meat at his residence, search was conducted. During search cooked deer meat, raw deer meat, vessels used for cooking the meat and knife used for the said purpose were recovered from the house of the 1st accused. Under the said premise, crime was registered alleging commission of offences punishable under Sections 9, 39, 50, 51 r/2 2 (16), 2(20), 2(36) of Wild Life (Protection) Act, 1972.

Subsequently, on the basis of confession statement given by the 1st accused, accused Nos.2 to 4 were also arrayed in the said crime.

5. The learned Counsel for the petitioners pointed out a very serious anomaly in so far as the investigation and recording of the confession by the Investigating Officer herein, who is none other than the Forest Ranger who is not authorised under Section 50(8) of the Wild Life (Protection) Act, 1972 neither to investigate nor to record confession. The learned Counsel for the petitioner placed two decisions on this point. **Luca Beltrami and Others v. State of Kerala** reported in 2020 (4) KHC 603 is the final decision placed to substantiate the said point. Apart from that, he has placed decision of the **Bombay High Court** in **Criminal Revision Application No.1 of 2015** rendered on 22.06.2015.

6. The learned Public Prosecutor though opposed this contention, she failed to go out of the orbit of Section 50(8) of the Wild Life (Protection) Act, 1972. Section 50 deals with the power of entry, search, arrest and detention of persons involved in offences under the Wild Life (Protection) Act, 1972. Sub-Sections (8) and (9) of Section 50 of the Wild Life (Protection) Act provides as under:

(8) Notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Director of Wild Life Preservation or [an officer not below the rank of Assistant Conservator of Forests authorised by the State Government in this behalf] shall have the powers, for purposes of making investigation into any offence against any provision of this Act—

- (a) to issue a search warrant;
- (b) to enforce the attendance of witnesses;
- (c) to compel the discovery and production of documents and material objects; and
- (d) to receive and record evidence.

(9) Any evidence recorded under clause (d) of sub-section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person.

Even on a cursory reading of the above legal provisions, it is clear that at the time of passing the Wild Life (Protection) Act, sub-section (8) was not there. However, by way of amendment introduced with effect from Act 16 of 2003, the Assistant Director of Wild Life Preservation was authorised to issue a search warrant; to enforce the attendance of witnesses; to compel the discovery and production of documents and material objects; and to receive and record evidence. Thereafter, by way of amendment introduced by amendment Act 44 of 1991, Assistant Conservator of Forest was authorised by the State Government in this behalf also was given the power to do the

said exercise since Section 50(8) authorises an officer not below the rank of Assistant Director of Wild Life Preservation or Assistant Conservator of Forests to receive and record evidence. Any officer not below their rank cannot have the power to do any acts provided as (a) to (d) and if anything done by the officer below the rank is a nullity and has no legal effect. Be it as may, the confession recorded by the Forest Ranger is a nullity and the same has no legal effect. So the legal question is emphatically clear that the competent persons to record confession statement, i.e., to record and receive evidence are (1) Assistant Director, Wild Life Preservation or (2) Assistant Conservator of Forests authorised by the State Government in this behalf and no other officer/officers below their rank. Therefore, the confession statement relied on by the prosecution to array accused Nos.2 to 4 in the crime, only be found as a statement recorded by an incompetent officer and the same has no legal sanctity.

7. Available materials, to be read out from the case diary suggest that apart from the confession statement, other evidence connecting accused Nos.2 to 4 not yet collected. In view of the above circumstances, there is no need to arrest and detain the petitioners/accused Nos.2 to 4 in the given facts

of this case. Therefore, I am inclined to release the petitioners on anticipatory bail on conditions.

In the result, this bail application stands allowed. The petitioners are enlarged on bail on the following conditions:

- i. The petitioners shall surrender before the Investigating Officer within ten days from today and on such surrender, the Investigating Officer can question the petitioners. In the event of their arrest, the Investigating Officer shall produce the petitioners before the Jurisdictional Court on the date of surrender itself.
- ii. On such production, Jurisdictional Court shall release the petitioners on bail, on executing bond for Rs.30,000/- (Rupees thirty thousand only) each by themselves and by two solvent sureties, each for the like sum to the satisfaction of the Jurisdictional Court.
- iii. The petitioners shall co-operate with investigation and shall be made available for interrogation and for the purpose of investigation, as and when the Investigating Officer directs so.
- iv. The petitioners, shall not, intimidate the witnesses or interfere with the investigation in any manner.

- v. The petitioners shall not commit any offence during currency of this bail and any such involvement is a reason to cancel the bail hereby granted.
- vi. Grant of anticipatory bail shall not stand in the way of the Investigating Officer to collect evidence against the petitioners in accordance with law, hereinafter.

Before parting, this Court is afraid of the outcome of investigation done by the officers below the rank of Assistant Director of Wild Life Preservation and Assistant Conservator of Forests. Therefore, it is the need of the hour to invite the attention of the legislature to make appropriate legislative amendments in the Wile Life (Protection) Act, 1972.

The Director General of Prosecution is directed to forward a copy of this order to the appropriate Government with request to consider necessary amendments in the Wild Life (Protection) Act, 1972.

Sd/-
A. BADHARUDEEN
JUDGE