

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

MONDAY, THE 28TH DAY OF SEPTEMBER 2020 / 6TH ASWINA, 1942

Bail Appl..No.6034 OF 2020

CRIME NO.592/2020 OF NENMARA POLICE STATION , PALAKKAD

PETITIONER/ACCUSED:

AMEER ALI,  
AGED 34 YEARS,  
SON OF SAITHALAVI,  
SANTHAPURATHU VEEDU,  
VILAYUR P.O,  
PATTAMBI,  
PALAKKAD PIN-679309

BY ADV. SRI.E.A.HARIS

RESPONDENT:

STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM - 682031

R1 BY PUBLIC PROSECUTOR

OTHER PRESENT:

SRI.SANTHOSH PETER - SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
28.09.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

## **ORDER**

**Dated this the 28<sup>th</sup> day of September, 2020**

### **APPLICATION FOR REGULAR BAIL**

The applicant is the accused in Crime No.592 of 2020 of Nenmara Police Station, Palakkad, for having allegedly committed offences punishable under Sections 153, 505(2) of the IPC and Section 117(e) of the Kerala Police Act. The prosecution case, in brief, is this:

2. The accused had allegedly prepared posters and pasted them at several places, creating or promoting hatred or ill will between two religious groups, by stating that Muslim youth were subjected to torture in custody by the North SI, Sudheer Kumar. The intention in coming out with such poster was to create ill will and promote enmity between two religious groups and thus, the applicant committed the alleged offence. Several cases were registered at different Police Stations, since the poster gained wide circulation and were allegedly pasted at different

places and the applicant was arrested initially, in another crime on 07.09.2020. The arrest in this particular crime was recorded on 14.09.2020. The applicant was granted bail in some of the crimes. But, since several crimes were registered, he has not come out of the prison, despite being granted bail in some of the cases. The applicant states that the maintainability of the allegation is doubtful and therefore, he may be released on bail.

3. Heard the learned counsel appearing for the applicant and the learned Public Prosecutor. The argument of the learned counsel appearing for the applicant is that Section 505(2) of the IPC is not attracted. That is the only non-bailable offence incorporated in this crime. The poster allegedly published, is produced at Annexure-2 does not create or promote enmity, hatred or ill will between classes as the primary requirement of attracting an offence under Section 505 (2) IPC.

4. It is also stated that the alleged incident of Police atrocity by the SI of Police, is also not untrue, because there was a specific allegation that the two Muslim youths, who were allegedly arrested in connection with Crime No.981 of 2020 of

Town North Police Station, Palakkad, were allegedly subjected to custodial torture. Facebook posts have also come in connection with this alleged torture. The photographs of the youths were also published and therefore, it cannot be said that the statement contains a rumour regarding an incident, which has not occurred at all. There is also no intention to create any ill will between two classes or community or religion. Hence, the applicant is entitled to be released on bail, argues the learned counsel for the applicant.

5. Per contra, the learned Public Prosecutor vehemently opposes the application for bail, stating that allegations have been made against the SI of Police, who belongs to a Hindu community and therefore, there is an attempt made by the applicant to create enmity, hatred and ill will between two classes and it is specifically stated that the persons, who are subjected to custodial torture are Muslim youth and indication is sufficiently there to show that the SI belonged to a different community.

6. On going through the poster allegedly published by the accused, it cannot be said that the intention of the accused was

to promote ill will or hatred between two communities. The allegation is specifically towards the SI of police, who has misused the office as a police officer, tortured Muslim youths and the applicant, being a leader of the SDPI, had highlighted this incident as a torture against Muslim youths. I am not concluding on whether an offence under Section 505 (2) IPC would be attracted or not, but there is sufficient indication for, this Court, to exercise jurisdiction in favour of granting bail to the applicant.

7. In ***Bilal Ahmed Kaloo v. State of AP (1997)(7 SCC 431)*** certain posters and publications were allegedly made by the accused therein against the Indian army, who had allegedly tortured Muslim youths in the State of Jammu And Kashmir. The Hon'ble Apex Court has specified that merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two provisions of Section 153A nor section 505.

8. In the instant case also, the allegation is mainly attributed to the SI of Police, who had allegedly tortured the Muslim Youths. But, merely, because the persons who were

subjected to torture have been described as Muslim youths by itself may probably not attract Section 505 (2) of the IPC, is the argument of the learned counsel appearing for the applicant. I am of the opinion that the applicant has been incarcerated for long enough and there is no need for further incarceration of the applicant and hence, he is entitled to bail.

9. In the result, the application is allowed and the applicant is directed to be released on bail on the execution of a bond for Rs.50,000/-(Rupees Fifty thousand only), with two solvent sureties, each for the like amount to the satisfaction of the jurisdictional court and on following further conditions:

(i) He shall appear before the Investigating Officer as and when called for.

(ii) He shall surrender his passport before the Investigating Officer which shall be produced before the jurisdictional court and shall not leave the country without sanction of the jurisdictional court.

(iii) He shall not intimidate or influence witnesses and tamper with evidence.

(iv) He shall not get involved in similar offences during the currency of the bail period.

In case of breach of any of the bail conditions, the prosecution shall be at liberty to apply for cancellation of the bail before the jurisdictional court.

The bail application is allowed.

**Sd/-**  
**ASHOK MENON**  
**JUDGE**