



CRL.A NO. 1939 OF 2023

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE K. BABU**

**TUESDAY, THE 6<sup>TH</sup> DAY OF FEBRUARY 2024 / 17TH MAGHA, 1945**

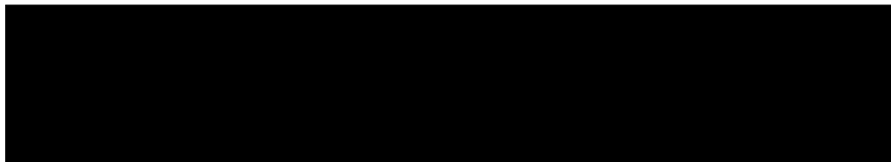
**CRL.A NO. 1939 OF 2023**

**CRIME NO.1891/2023 OF Ernakulam North Police Station,  
Ernakulam**

**AGAINST THE ORDER/JUDGMENT SC 1688/2023 OF DISTRICT COURT &  
SESSIONS COURT, ERNAKULAM**

**APPELLANT:**

NOUSHID P. A.



BY ADVS.

BIJU ANTONY ALOOR

HARITHA HARIHARAN

AILIN ELEZABATH MATHEW

K.P.PRASANTH

ARCHANA SURESH

**RESPONDENTS:**

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, PIN - 682031
  - 2 THE ASST. COMMISSIONER OF POLICE  
CENTRAL SUB DIVISION, ERNAKULAM, ERNAKULAM DISTRICT,  
PIN - 682018
  - 3 RAVI CK  
AGED 52 YEARS  
S/O. KARUTHAKUNJU, CHIRAMELIL-HOUSE, VALINMELCHIRA-  
DESOM, VAZHAPPALLY KIZHAKKU-VILLAGE, CHANGANASSERY-  
TALUK, KOTTAYAM-DISTRICT, PIN - 686103
- G.SUDHEER, PP



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THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON  
06.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.BABU, J.**

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**Crl.A. No.1939 of 2023**  
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**Dated this the 6<sup>th</sup> day of February, 2024****J U D G M E N T**

This appeal is filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant is the accused in Crime No.1891 of 2023 of Town North Police Station, Ernakulam. He is alleged to have committed offences punishable under Section 302 of the IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

**The prosecution case:**

2. The deceased Reshma, the victim belongs to Scheduled Caste. The appellant belongs to the Muslim community. The appellant and the victim developed an acquaintance through social media in 2019. The appellant promised the victim to marry her. They lived together as husband and wife. On account of the promise of marriage, she



was subjected to sexual intercourse by the appellant. The deceased started to reside in a hostel at Kaloore under the guardianship of the appellant. The appellant attempted to withdraw from the offer to marry her. He developed an impression that the victim had intimacy with one of his friends Akhilan. He also believed that the deceased spread some derogatory statements against him. On account of this enmity to commit murder of the victim, who belongs to Scheduled Caste, the appellant took her on 09.08.2023 to his residential room situated at Kaippally Apartment Hotel, Kaloore. He questioned her in an intimidating manner and the same was videographed. On that day, at about 9.00 p.m., the appellant committed murder of the victim by stabbing various parts of her body using a sharp-edged knife.

3. Heard the learned counsel for the appellant and the learned Public Prosecutor.

4. The learned counsel for the appellant submitted that, as the investigation is over, further detention of the appellant is not required. The learned counsel relied on Prabhakar Tewari v.



State of Uttar Pradesh [(2020) 11 SCC 648], Sumitra V. State of Maharashtra [2018 SCC 1550], Ajmal V. State of Kerala [92022) 9 SCC 766] and Dataram Singh V. State of Uttar Pradesh, Ors [AIR 2018 SC 980], in support of his contention that the appellant is entitled to be released on bail. He also submitted that the prosecution failed to produce material to establish the ingredients of the offence punishable under Section 302 of the IPC.

5. The learned Public Prosecutor opposed the application seeking release of the appellant on bail. The learned Public Prosecutor submitted that the offences alleged against the appellant are very grave. It is submitted that the release of the appellant, who has criminal antecedents, would lead to a circumstance where he may threaten the witnesses and the relatives of the deceased. The learned Public Prosecutor submitted that the appellant is accused in Crime No.327 of 2021 of Aluva West Police Station, in which the offence alleged is punishable under Section 307 of the IPC.

6. The jurisdiction to grant bail has to be exercised on



the basis of well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while dealing with application for bail:

- (i) The nature of the accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;
- (ii) Reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;
- (iii) Reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his fleeing from justice;
- (iv) Character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;
- (v) Larger interest of the public or the State and similar other considerations.



7. There is no hard and fast rule regarding granting or refusing bail. Each case has to be considered on the relevant facts and circumstances and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner.

8. I have perused the Case Diary and the report submitted by the Investigating Officer. The learned counsel for the appellant submitted that there is every possibility that the injuries were self-inflicted. The post-mortem report shows 25 antemortem injuries. The doctor who conducted the post-mortem has opined that the cause of death was due to incised wounds sustained to the neck.

9. The court below relied on the following circumstances to reject the application seeking bail:-

- a) The appellant/petitioner has criminal antecedents.
- b) The defacto complainant, the father of the victim, appeared before the court and raised the apprehension that if bail is granted, the accused will chase them to wreck vengeance, and their



safety will be in danger.

c) The offence alleged is very brutal.

10. The Investigating Officer submitted a report wherein the following concerns were raised:-

- i) If the appellant is released on bail, there is every possibility that he will threaten the witnesses and tamper with the evidence.
- ii) The defacto complainant and the relatives of the victim face persistent threats from the appellant and his friends.
- iii) The appellant has criminal antecedents.
- iv) There is a possibility that the appellant will abscond.
- v) There is a further possibility that he may repeat similar offences.

11. In serious offences, the courts should not lightly entertain the bail application when there is a prima facie case. Where the offence complained is of such nature as to shake the confidence of the public, bail shall not be granted. Bail is a





rule, and jail is an exception, but the accused involved in offences, which are grave, serious and heinous, fall within the exception and not the rule.

12. While the court cannot ignore the fundamental right of the accused under Article 21 of the Constitution, it cannot shut its eyes totally to the atrocious nature of the offence committed. Ultimately, it is a question of harmonizing the two situations and finding the course to be adopted to see that justice is done to both parties.

13. I have gone through the relevant materials. The appellant is alleged to have committed a heinous offence. The prosecution has established a prima facie case. The prosecution has very serious apprehension that the release of the appellant will lead to threatening of the witnesses and tampering with the evidence. It is further brought to the notice of the court that the safety of the defacto complainant, who is the father of the victim, will be in peril if the appellant is released on bail.

Having considered the entire circumstance, I am of the view that the appellant is not entitled to be released on bail.



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The criminal appeal lacks merits, and it stands dismissed. The trial court is directed to conduct an expeditious trial of the matter.

**Sd/-  
K.BABU,  
JUDGE**

saap



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**APPENDIX OF CRL.A 1939/2023**

PETITIONER ANNEXURES

Annexure 1	FREE COPY OF THE ORDER CRL.M.P NO. 5104/2023 DATED 28/11/2023
Annexure 2	TRUE COPY OF THE RELEVANT PAGES OF CHARGE SHEET S.C NO. 1688/2023 DATED NIL

//True copy// PA to Judge