



2024:KER:54746

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

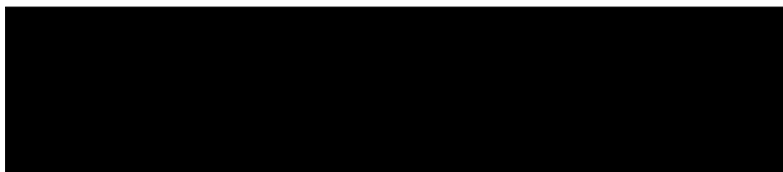
THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 22ND DAY OF JULY 2024 / 31ST ASHADHA, 1946

BAIL APPL. NO. 5462 OF 2024

CRIME NO.520/2024 OF Ernakulam South Police Station,
Ernakulam

PETITIONER/S:



BY ADVS.
GEO PAUL
C.R.PRAMOD
JACOB GEORGE PALLATH
NAVEEN T.U.
S.ASHOK KUMAR.
HARIKRISHNAN A.S.
AKSHAI.K.R.
MARIYAM MATHEWS
C.B.GAUTHAM

RESPONDENT/S:

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

BY ADVS.
PUBLIC PROSECUTOR
ADDL.DIRECTOR GENERAL OF PROSECUTION

OTHER PRESENT:

SR ADV SRI VIJAYABHANU

ADGP SRI GRASHIOUS KURIAKOSE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
22.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



2024:KER:54746

C.S.DIAS,J

Bail Application No.5462 of 2024

Dated this the 22nd day of July, 2024

ORDER

The application is filed under Section 439 of the Code of Criminal Procedure, 1973, presently by the sole accused in Crime No.520/2024 of the Ernakulam South Police Station, Ernakulam, which is registered against her for allegedly committing the offence punishable under Section 302 of the Indian Penal Code (in short, 'IPC). The petitioner was arrested and remanded to judicial custody on 03.05.2024.

2. The gravamen of the prosecution case is that: on 03.05.2024, in the early morning hours, the accused, who is unmarried, gave birth to a male child. Subsequently, with the intention to conceal the birth and to do away with the infant, the accused covered the face and nose of the infant with a cloth, and placed the infant in a bag, secured the bag with a rubber band, and at around 08.14 hours, threw the bag to the road. The infant lost his life



due to the fall from the building and the acts of the accused. Thus, the accused has committed the above offence.

3. Heard; Sri.P.Vijayabhanu, the learned Senior Counsel appearing for the petitioner and Sri.Gracious Kuriakose, the learned Additional Director General of Prosecution.

4. The learned Senior Counsel for the petitioner contended that the petitioner is totally innocent of the accusations leveled against her. There is no material to substantiate that the petitioner has committed the offence under Section 302 of the IPC. The Investigating Officer has falsely implicated the petitioner in the crime and attributed the murder of her own child. The petitioner is a victim of rape and is a young unmarried lady, who is totally devastated and crestfallen, and is under mental depression. She has been in judicial custody for the last 80 days, the investigation in the case is complete and



recovery has been completed. Moreover, the petitioner does not have any criminal antecedents. Therefore, taking into account the peculiar facts and circumstances of the case, especially that the petitioner needs medical assistance, this Court may take a lenient view and enlarge the petitioner on bail.

5. The learned Additional Director General of Prosecution formally opposed the application. He submitted that the investigation in the case, so far as the petitioner is concerned, is practically complete, the recovery has been effected, and the petitioner does not have any criminal antecedents.

6. The prosecution allegation against the petitioner is that, she for the purpose of concealing the birth of her child, murdered and threw the infant on the road.

7. The materials on record reveal that the petitioner is a 23 year old girl, who is unmarried. It is alleged that the petitioner conceived the child in a rape that was



committed on her. It is without knowing the consequences, that the petitioner delivered a stillborn infant. The fact remains that the petitioner has been in judicial custody for the last 80 days, the investigation in the case is practically complete, the recovery has been effected and the petitioner does not have any criminal antecedents.

8. In ***Sanjay Chandra v. CBI***, [2012 1 SCC 40], the Honourable Supreme Court has categorically held that the fundamental postulate of criminal jurisprudence is the presumption of innocence until a person is found guilty. Any imprisonment prior to conviction is to be considered as punitive and it would be improper on the part of the Court to refuse bail solely on the ground of former conduct.

9. In ***Dataram Singh v. State of U.P.***, [(2018) 3 SCC 22] the Honourable Supreme Court observed that grant of bail is a rule and putting a person in jail is an



exception. Even though the grant of bail is entirely the discretion of the court, it has to be evaluated based on the facts and circumstances of each case and the discretion has to be exercised in a judicious and compassionate manner.

10. In bail applications, generally, it has been laid down from the earliest times that, the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

11. On an overall consideration of the facts, rival submissions made across the Bar, and the materials



placed on record, particularly considering the fact that the petitioner is a young lady aged 23 years, she is an alleged victim of a rape, she has been in judicial custody for the last 80 days, the investigation in the case is complete, recovery has been effected and further the petitioner does not have any criminal antecedents, I am of the firm view that the petitioner's further detention is unnecessary. Hence, I am inclined to allow the bail application, but subject to stringent conditions.

In the result, the application is allowed, by directing the petitioner to be released on bail on her executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

- i. The petitioner shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is laid. She shall also appear before the Investigating Officer



on every third Saturday till the conclusion of the trial in Crime No.520/2024 and also as and when directed by the Investigating Officer;

- ii. The petitioner shall not directly or indirectly make any inducement, threat or procure to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;
- iii. The petitioner shall not commit any offence while she is on bail;
- iv. The petitioner shall not leave the territorial jurisdiction of the Court of Session, Ernakulam without previous permission of the jurisdictional court;
- v. The petitioner shall surrender her passport, if any, before the court below at the time of execution of the bond. If she has no passport, she shall file an affidavit to the effect before the court below on the date of execution of the bond;
- vi. In case of violation of any of the conditions mentioned above, the jurisdictional court shall be



empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

vii. Application for deletion/modification of the bail conditions shall be moved and entertained by the court below.

viii. Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in ***Sushila Aggarwal v. State (NCT of Delhi) and another [2020 (1) KHC 663]***.

sd/-

C.S.DIAS,JUDGE



2024:KER:54746

BAIL APPL. NO. 5462 OF 2024

10

APPENDIX OF BAIL APPL. 5462/2024

PETITIONER ANNEXURES

Annexure 1 ORDER IN CRL. MP.NO,2364/2024 DATED 10-05-2024

Annexure 2 ORDER IN CRL .M.C.NO.1573 OF 2024 DATED 28-05-2024

Annexure 3 ORDER IN CRL .M.C.NO.1826 OF 2024 DATED 24-06-2024