



2023/KER/41733

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

MONDAY, THE 24TH DAY OF JULY 2023 / 2ND SRAVANA, 1945

BAIL APPL. NO. 5397 OF 2023

CRIME NO.526/2023 OF TANUR POLICE STATION, MALAPPURAM

PETITIONER/11TH ACCUSED:

SEBASTIAN JOSEPH
AGED 43 YEARS
S/O K J JOSEPH, KALLANIKKAL HOUSE, KURUVIKKAD,
VATTIYOORKAVU P O, THIRUVANANTHAPURAM, PIN - 695013
BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
PRERITH PHILIP JOSEPH
ANILKUMAR C.R.

RESPONDENT/S:

- 1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM (CRIME NO. 526/2023 OF TANUR POLICE STATION,
MALAPPURAM), PIN - 682031
- 2 MUNEERA (SOUGHT TO BE IMPLEADED)
W/O LATE SIDHEEK, ULLATTIL, KUNDUNGAL, TANALUR,
MALAPPURAM
BY ADVS.
R1 BY SR.ADV.GRACIOUS KURIAKOSE, ADDITIONAL DIRECTOR
GENERAL OF PROSECUTION.
SRI.SURESH, SR.PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 19.07.2023
ALONG WITH Bail Appl..5414/2023, THE COURT ON 24.07.2023 PASSED THE
FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

MONDAY, THE 24TH DAY OF JULY 2023 / 2ND SRAVANA, 1945

BAIL APPL. NO. 5414 OF 2023

CRIME NO.526/2023 OF TANUR POLICE STATION, MALAPPURAM

PETITIONER/12TH ACCUSED:

PRASAD V.V.
AGED 50 YEARS
S/O THAMIKUTTY, VALIAVEETIL HOUSE, PONNANI POST,
PUNNANTHURUTHU, MALAPPURAM, PIN - 676106
BY ADVS.
S.RAJEEV
V.VINAY
PRERITH PHILIP JOSEPH
M.S.ANEER
SARATH K.P.
ANILKUMAR C.R.

RESPONDENT/S:

- 1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM (CRIME NO. 526/2023 OF TANUR POLICE STATION,
MALAPPURAM), PIN - 682031
- 2 MUNEERA (SOUGHT TO BE IMPLEADED)
W/O LATE SIDHEEK, ULLATTIL, KUNDUNGAL, TANALUR,
MALAPPURAM (SOUGHT TO BE IMPLEADED)
BY ADVS.
R1 BY SR.ADV.GRACIOUS KURIAKOSE, ADDITIONAL DIRECTOR
GENERAL OF PROSECUTION.
SRI.SURESH, SR.PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
19.07.2023, ALONG WITH Bail Appl..5397/2023, THE COURT ON
24.07.2023 PASSED THE FOLLOWING:



ORDER

[Bail Appl. Nos.5397/2023, 5414/2023]

...

These Bail Applications were submitted by accused Nos.11 and 12 in Crime No.526/2023 of Thanoor Police Station. B.A.No.5397/2023 is filed by the 11th accused, whereas B.A.No.5414/2023 is filed by the 12th accused.

2. The aforesaid crime was registered in connection with a boat tragedy that happened on 7.5.2023 at about 7 p.m. at Thanoor Ottupuram River. On that day, a boat owned by the 1st accused carrying 52 persons, including the crew, capsized, and in the incident, 22 passengers died, and several others sustained serious injuries. Initially, the crime was registered under section 174 of the Code of Criminal Procedure (Cr.P.C). During the investigation, it was found that, the offences were punishable under Sections 302, 307, 325, 323, 112, 109, 468, and 471



r/w. Section 34 of the Indian Penal Code (IPC) were attracted, and accordingly, the offences were altered by incorporating the said offences.

3. The 11th accused is the Chief Surveyor of the Port Department of the Kerala Maritime Board and the 12th accused is the Senior Port Conservator, Baypore. The role of the said accused, as per the prosecution case is to the effect that they permitted the operation of the said boat by carrying people even before its registration was complete. It is also alleged that the boat was initially a fishing boat, and as against statutory provisions, it was converted into a passenger boat, and the petitioners have helped the 1st accused, the owner of the boat, to carry out necessary alterations in this regard. As part of the investigation, the petitioners/accused Nos.11 and 12 were arrested on 11/6/2023. Since then, they have been under judicial detention. These applications for regular bail are submitted in such circumstances.



4. Heard Sri. S. Rajeev, the learned counsel for the petitioners and Sri. Gracious Kuriakose, the learned Senior Counsel and Additional Director General of Prosecution, assisted by Sri. Suresh, the learned Senior Public Prosecutor, appeared for the State.

5. The learned counsel for the petitioners submits that, the petitioners are innocent of all the allegations and they were roped in without any materials to establish their culpability. It is pointed out that, initially, the owner of the boat submitted an application before the authorities for conducting a preliminary survey for the purpose of registration and the same was forwarded to the Chief Surveyor, the 11th accused. However, as the alteration of the boat was done without obtaining prior permission in this regard and the boat was produced after completion of the work, the 11th accused rejected the said application. Thereupon, the 12th accused communicated the said fact to the Chief Executive



Officer of Kerala Maritime Board. Annexure-2 is the aforesaid document. Thereafter the Chief Executive Officer issued Annexure-3 communication directing the petitioners herein to accept the application form after collecting a penalty of Rs.10,000/- as contemplated under Section 87(2) of the Inland Vessels Act, 2021 and thereby condoning the failure on the part of the applicant in obtaining prior permission for construction or alteration. It was stipulated therein that the question of the stability of the boat and other safety guidelines can be considered at the time of the survey and processing of the application for registration. Consequently, a survey of the boat was conducted after collecting the fine as proposed. Annexure-6 is the certificate of survey of the boat issued by the 11th accused. It was pointed out that, in the said certificate of survey, the 11th accused showed the carrying capacity of the boat as 22, that too on the lower deck thereof. Based on the said certificate



of survey, the proceedings for the registration of the said boat were in progress. The incident occurred at the relevant time, i.e. before obtaining the registration. It is pointed out that, as per the prosecution case, the specific allegation is that, at the relevant time, the boat was carrying 52 persons without any safety measures such as life jackets and other equipment, and the main causes of the accident were the overloading and the lack of stability of the boat. The main reason for the accident was the operation of the boat, in utter disregard to the adherence to statutory provisions by the 1st accused and the other accused. Therefore, the petitioners, who never granted any statutory permission for the said boat to operate, cannot be proceeded against, contends the learned counsel. It is pointed out that, as regards the 12th accused, the prosecution case is that he conveyed the proposed registration number of the boat to the 1st accused, the owner of the boat, even



before the registration formalities were over and thereby provided an opportunity to the 1st accused to operate the said boat. However, according to the petitioners, there are no materials to substantiate the said allegations. It was pointed out by the learned counsel for the petitioners that, under no circumstances, none of the petitioners could be attributed to any responsibility in respect of the accident as it was caused only due to the act of the 1st accused and other accused in operating the vehicle in violation of the safety norms by carrying excess passengers than the permissible limit and also without taking any safety precautions for the passengers. The learned counsel also pointed out that the 12th accused had already submitted complaints before the Inspector General of Police, Areekode, the District Collector, Malappuram and the Inspector of Police, Vazhakkad highlighting that during the inspection conducted on 17.3.2023, it was noticed that, several tourist boats



including the boats which were initially fishing boats altered as passenger boats, were found operating in the Chaliyar river in violation of the statutory norms and therefore recommended to take action to prevent such operation. According to the petitioners, the said communication was dated 18.3.2023, which was before the accident. But no steps were taken by the authorities. Therefore, it is pointed out that, the petitioners are being victimized by implicating them as accused persons even though there are absolutely no materials to show their involvement in the offences.

6. The learned Additional Director General of Prosecution would vehemently oppose the aforesaid prayer. It is pointed out that, the survey of the boat was conducted by the 11th accused, and he issued the certificate of the survey without taking note of the serious lapses in the design of the boat and also by suppressing the fact that the same was a fishing boat converted to passenger boat which was not permissible



as per law. The stability of the boat was also not properly assessed by the 11th accused while carrying out the survey. It is further pointed out by the learned ADGP that, in the certificate of survey, the 11th accused also suppressed the fact that the boat had an upper deck with handrails on four sides of the boat with a ladder to climb on to the upper deck, where the passengers could be accommodated. According to the prosecution, the said act was willfully omitted by the 11th accused in the certificate of survey to enable the 1st accused to get the boat registered without fulfilling the necessary requirements regarding the stability and other relevant aspects. The learned ADGP made available the case diary along with the report of the Investigating Officer highlighting the nature of allegations against the petitioners and the steps they have taken as part of the investigation.

7. I have carefully gone through the records, including the case diary. There are indeed materials



on record indicating the possibility of lapses or willful omissions on the part of the petitioners herein. As is evident from the certificate of survey, the column provided for the year of the built of the boat was kept blank, which appears to be conspicuous. The relevance of the aforesaid aspect is that the prosecution has a specific case that the boat was converted from a fishing boat to a passenger boat against the statutory provisions as contemplated under the provisions of the Inland Vessels Act, 2021. The 11th accused, being a qualified person, could have easily detected the aforesaid alteration on inspection and reported the matter. In all probabilities, the 11th accused must have noticed the said aspect, but yet he did not mention anything in the certificate of the survey with respect to the same and the column provided for the year of the built is kept blank to avoid any reference with regard to the same.

8. In addition to that, it is also contended by



the learned ADGP that while preparing the certificate of survey, the 11th accused made no mention of the upper deck, even though the upper portion of the boat had every characteristic of the upper deck to carry passengers.

9. The explanation on the part of the 11th accused is that, at the time of inspection, he was appraised that the upper portion was designed to carry only a water tank and the ladder was provided to enable the employees to have access to the said water tank. On going through the case diary produced before this court, there is some force in the contention put forward by the learned ADGP regarding impropriety in conducting the survey and issuing a certificate of survey. Some of the crucial aspects which were to be recorded therein are not seen mentioned in the certificate of survey. Moreover, it is also highlighted by the learned ADGP that the alteration of the boat was done in an unauthorized yard, and false



documents were submitted by the 1st accused to show that the works were carried out in an authorized yard. This aspect was also not examined by the 11th accused while issuing the certificate of survey.

10. As far as the role of the 12th accused is concerned, the allegation against the said accused to the effect that he conveyed the proposed registration number of the boat to the 1st accused before completing the registration process, which enabled him to operate the boat service. The said aspect was sought to be substantiated by the learned ADGP through the messages exchanged between the parties.

11. Thus, it is evident that, there are certain aspects indicating the lapses (willful or otherwise) on the part of the petitioners herein, which need to be investigated. However, it is a fact that, both the said petitioners were arrested on 11.6.2023, and since then, they have been under judicial detention. The question that arises here is whether further



incarceration of the petitioners is required or not. When the materials produced before this Court are considered in that perspective, it is to be noticed that, as per the report of the Investigating Officer, as of now, 360 witnesses were questioned, several documents were seized, and several mahazars were prepared touching upon the various aspects of the investigation, including the operation of the boat, paper works so far done for the ongoing registration process of the boat. It is discernible that, the registration particulars of the old fishing boat were also collected, and the documents from the Port offices at Baypore and Alappuzha, the Municipal office, Thanoor and the office of the Registrar of Companies etc were also seized. Thus, it is evident that, there is substantial progress in the investigation and the documents from the authorities concerned, including those from the offices of the petitioners, were also seized.



12. The learned counsel for the petitioners would seriously raise the contention that none of the offences as alleged would be attracted against the petitioners as they never had any direct involvement in the incident. The learned counsel also relied on the observations made by this Court in Raju v. State of Kerala (2021 (1) KLT Online 1092), which was a case registered in connection with a similar boat tragedy at Thattekkad. It was a case where the accused persons therein were prosecuted for the offence under 304 of the IPC. In the said decision, it was observed that the knowledge contemplated under sections 299 and 304 of IPC is of a higher degree, and the knowledge of a mere possibility that the act may cause death is not the knowledge envisaged. Even though I find some force in the contention of the learned counsel for the petitioners in this regard, I am not considering the said question at this point of time, as the matter is under investigation. The said question is to be



considered during the course of the trial by the competent court after evaluating all the materials collected during the investigation.

13. As mentioned above, now the petitioners have been in judicial custody since 11.6.2023, and as on the date, more than 40 days have elapsed since the date of their arrest. Even though the learned ADGP highlighted that there are high chances of the evidence being tampered with and the witnesses being influenced, if the petitioners are released on bail, I do not find any justifiable reason to accept the contention. It is reported that, both the petitioners are already under suspension, and therefore, I do not find any possibility of them tampering with the evidence. Moreover, it is evident from the report of the investigating officer that the records kept in the office of the petitioners in connection with the incident were already seized. The learned ADGP also strongly highlighted that this is a case in which 22



persons lost their lives and several persons were injured. The incident got huge attention from the public, and if the petitioners are released on bail at this juncture, it would send a wrong message to the society. In this regard, I am of the view that the 1st accused, who is the owner and person who operated the boat, is already under judicial detention, and the persons who helped him were also arrested and are in confinement. Even going by the prosecution case, it is evident that, one of the crucial reasons for the accident is that the persons operating the boat permitted entry of 52 persons in the boat, whereas the maximum carrying capacity was only 22. Further, the boat did not have any authorization to be operated as the registration process was not complete. Besides the same, the person riding the boat was also not licensed. Thus, it can be seen that, even as per the prosecution itself the direct cause of the accident was the illegal operation of the boat by the 1st



accused and his agents. Now they were arrested and detained. As far as the role of the petitioners is concerned, the same is to the effect that they permitted and facilitated the 1st accused to operate the said boat without complying with the statutory requirements. It is a matter to be established by the prosecution. Anyhow, considering all the materials placed before this Court and also the fact that the petitioners have been in custody for more than 40 days, I do not find any necessity for further incarceration of the petitioners. In this regard, it is also to be noted that the detention of the accused during the investigation cannot be for punitive or preventive purposes.

In such circumstances, I am of the view that, these Bail Applications can be allowed by granting bail to the petitioners with appropriate conditions to ensure that they are cooperating with the investigation and the trial. Thus, the petitioners are



directed to be released on bail subject to the following conditions:

- (i) The petitioners shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One Lakh only) each with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.
- (ii) The petitioners shall fully cooperate with the investigation.
- (iii) The petitioners shall appear before the Investigating Officer between 10.00 a.m. and 11.00 a.m. every Saturday until the filing of the final report.
- (iv) The petitioners shall also appear before the Investigating Officer as and when required.
- (v) The petitioners shall not commit any offence of similar nature while on bail.
- (vi) The petitioners shall not make any attempt to contact any of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any



witnesses or other persons related to the investigation.

(vii)The petitioners shall not leave India without the permission of the trial Court.

In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation of bail, if any, and pass appropriate orders in accordance with the law.

Sd/-

ZIYAD RAHMAN A.A., JUDGE

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