

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 10<sup>TH</sup> DAY OF MARCH 2023 / 19TH PHALGUNA, 1944

BAIL APPL. NO. 5587 OF 2022

CRIME NO.289/2022 OF KANJIRAPPALLY POLICE STATION, KOTTAYAM

PETITIONER/ACCUSED:

GEORGE KURIAN @PAPPAN  
AGED 52 YEARS  
S/O. K.V.KURIAN, KARIMPANAL HOUSE, KARIMPANAPPADY  
BHAGOM, KANJIRAPALLY, KOTTAYAM DISTRICT, NOW  
RESIDING AT, FLAT NO. CA.111 RIVERA RETREAT,  
THEVARA, ERNAKULAM - 682013, PIN - 682013.

BY ADVS.  
HARINDRANATH B G  
AMITH KRISHNAN H. (K/000666/2015)  
M.GOPIKRISHNAN (K/000841/2017)  
LEJO JOSEPH GEORGE (K/357-C/2017)

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, PIN - 682031
- 2 ADDL R2 ANNIE MATHEW  
W/O LATE MATHEW ZACHARIA, POTTAMKULAM, KOOTIKKAL,  
MUNDAKAYAM, KOTTAYAM IS IMPEADED AS ADDL R2 AS PER  
ORDER DATED 28/02/2023 IN CRL MA 1/2022

BY ADVS.  
PUBLIC PROSECUTOR  
S.RAJEEV  
SAIBY JOSE KIDANGOOR  
DIRECTOR GENERAL OF PROSECUTION (AG-10)  
P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC  
PROSECUTOR ()  
ANOOP SEBASTIAN

IRINE MATHEW  
ANJALI NAIR  
BENNY ANTONY PAREL  
PRAMITHA AUGUSTINE  
ADITHYA KIRAN V.E  
NAAIL FATHIMA ABDULLA A.  
V.VINAY  
M.S.ANEER  
SARATH K.P.  
PRERITH PHILIP JOSEPH

P NARAYANAN ADDL. PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON  
28.02.2023, THE COURT ON 10.03.2023 DELIVERED THE FOLLOWING:

**'C.R'**

***A. BADHARUDEEN, J.***

=====  
*B.A.No.5587 of 2022*  
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*Dated this the 10<sup>th</sup> day of March, 2023*

***O R D E R***

This is an application for regular bail filed by the sole accused in Crime No.289 of 2022 of Kanjirappally Police Station, Kottayam under Section 439 of the Code of Criminal Procedure, where he alleged to have committed offences punishable under Section 302 of the Indian Penal Code and under Section 27(1) of the Arms Act.

2. Heard the learned counsel Shri B.G.Harindranath, appearing for the petitioner as well as the learned Additional Public Prosecutor Shri P.Narayanan and learned Advocate Shri S.Rajeev, appearing for the defacto complainant. Perused the relevant documents.

3. The prosecution case is that the accused herein committed double murder at 7 a.m on 07.03.2022 by firing with a revolver and the persons died are the petitioner's direct brother and uncle. It is on this premise, the crime was registered alleging commission of the above offences.

4. The learned counsel for the petitioner fervently argued to canvass regular bail to the petitioner and it is pointed out that the petitioner has been in custody from 07.03.2022 onwards and final report has already been filed. The learned counsel for the petitioner also submitted that this case stands posted for trial during the month of April, 2023 and the trial also could not be materialised as scheduled. Therefore, the petitioner's incarceration further is not necessary for any purpose and as such he may be released on bail.

5. The learned counsel for the petitioner placed a decision of the Apex Court reported in [(2012) 2 SCC 680], ***Susanta Ghosh v. State of West Bengal***, to contend that when considering grant of bail to an accused, the factors to be considered are 3 fold, viz.,

- (i) chances of tampering with the evidence,
- (ii) chances of interfering with the investigation and
- (iii) chances of absconsion.

If the above chances are found in the negative, the petitioner is liable to be released on bail.

6. Whereas the learned Public Prosecutor zealously opposed bail and submitted that the petitioner, who committed murder of his direct brother and uncle after informing the same to the sister (CW41) on the previous day, cannot be released on bail. It is also pointed out that the parents of the petitioner also had given statement against the petitioner and in the event of his release on bail, he would do away them also. That apart, the witnesses in this case, rests on direct evidence, are the close relatives of the petitioner and, therefore, if he would be released on bail, he would threaten and influence the witnesses, if so, fair trial could not be ensured. It is also pointed out by the learned Public Prosecutor that, most shockingly, the accused herein manhandled his parents demanding money on the previous day, i.e

on 06.03.2022, before this occurrence and for which, Crime No.353/2022 alleging commission of offence punishable under Section 324 of the Indian Penal Code also was registered. It is also pointed out that the petitioner, while in jail, arranged one of the inmates in the jail, who got involved in Crime No.1773/2021 of Kanjirappally Police station, when he was released from jail on 12.07.2022, to threaten the Investigating Officer with dire consequences and the said person was given quotation by the petitioner for annihilating the Investigating Officer, for which also Crime No.933/2022 of Ponkunnam Police Station, alleging commission of offences punishable under Sections 294(b) and 506(ii) of IPC was registered and the same also is on investigation. Therefore, if the petitioner would be released on bail, he would topsy-turvy fair trial. It is submitted that in view of scheduling of the matter to April, 2023 for trial, there is no necessity to grant bail in this case involving double murder, since trial could be completed before May, 2023.

7. Advocate S.Rajeev, who also shared the argument of the

learned Public Prosecutor, specifically pointed out that the defacto complainant, the wife of the brother of the accused who was murdered, also apprehends annihilation at the hands of the petitioner, if he would be released on bail. That apart, the life of the father and mother including the crucial witnesses would be in danger if the petitioner would be released on bail.

8. The learned Public Prosecutor placed a decision of the Apex Court reported in [(2008) 3 SCC 775], ***Gobarbhai Naranbhai Singala v. State of Gujarat & Ors.*** to contend that the parameters governing grant of bail are not exhaustive as per the ratio in the decision in ***Susanta Ghosh v. State of West Bengal***'s case (*supra*), placed by the learned counsel for the petitioner.

9. In ***Gobarbhai Naranbhai Singala v. State of Gujarat & Ors.***'s case (*supra*), the Apex Court after referring its earlier decision reported in [(2005) 8 SCC 21 ], ***State of U.P v. Amarmani Tripathi***, held that while considering the application for bail, the following aspects shall be looked into:

*(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*

*(ii) nature and gravity of the charge;*

*(iii) severity of the punishment in the event of conviction;*

*(iv) danger of the accused absconding or fleeing if released on bail;*

*(v) character, behaviour, means, position and standing of the accused;*

*(vi) likelihood of the offence being repeated;*

*(vii) reasonable apprehension of the witnesses being tampered with; and*

*(viii) danger, of course, of justice being thwarted by grant of bail.*

10. The learned Advocate Shri S.Rajeev, representing the defacto complainant also highlighted a latest decision of the Apex Court reported in [2022 (1) KLT OnLine 1144 (SC)], ***Sunil Kumar v. State of Bihar*** to appraise the principles governing grant of bail.



In this decision, the Apex Court relied on its earlier decision in [2017 (4) KLT OnLine 2110 (SC)], *Anil Kumar Yadav v. State (NCT of Delhi)* and held that while granting bail, the relevant considerations are as under:

“(i) *nature of seriousness of the offence;*

(ii) *character of the evidence and circumstances which are peculiar to the accused;*

(iii) *likelihood of the accused fleeing from justice;*

(iv) *the impact that his release may make on the prosecution witnesses, its impact on the society; and*

(v) *likelihood of his tampering.”*

11. Before going into the merits of the contentions argued by the respective counsel, it is necessary in the interest of justice to hold that the 3 factors, viz., (i) chances of tampering with the evidence, (ii) chances of interfering with the investigation and (iii) chances of absconsion, dealt by the Apex Court in *Susanta Ghosh v. State of West Bengal*'s case (*supra*), are not exhaustive. Many other factors

would govern grant of bail. The same can be summarised as under:

*(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*

*(ii) nature and gravity of the offences;*

*(iii) severity of the punishment in the event of conviction;*

*(iv) danger of the accused absconding or fleeing if released on bail;*

*(v) character, behaviour, means, position and standing of the accused;*

*(vi) likelihood of the offence being repeated;*

*(vii) reasonable apprehension of the witnesses being tampered with; and*

*(viii) danger, of course, of justice being thwarted by grant of bail.*

*(ix) danger of threats or influence on witnesses so that the witnesses could not depose the truth before the court;*

*(x) character of the evidence and circumstances which are*

*peculiar to the accused;*

*(xi) fatality of witnesses;*

*(xii) the impact that his release may make on the prosecution witnesses, its impact on the society;*

*(xiii) likelihood of his tampering the evidence;*

*(xiv) chances of interfering with the investigation*

*(xv) the way and manner in which the crime was committed;*

*(xvi) the motive behind the crime.*

12. While evaluating the facts of the case, on settled principles of law governing grant of bail, as espoused, it is discernible that the petitioner herein demanded money from his parents on 06.03.2022 and on refusal of the said demand, he had manhandled them and for which Crime No.353/2022 alleging commission of offence under Section 324 of IPC was registered by Kanjirappally Police. Thereafter, the petitioner on 06.03.2022 sent a Whatsapp message to his sister (CW41) expressing his intention to commit murder of his brother and uncle. It was thereafter the

petitioner herein fired Renju Kurian and Mathew Scaria (his brother and uncle) with special mens rea to commit murder and in consequence of the said overt act, both of them died.

13. In this matter, the learned Sessions Judge admittedly scheduled this case for trial during April, 2023 itself. On perusal of the records on par with the arguments advanced by the learned Public Prosecutor as well as the learned counsel for the defacto complainant, it appears that the parents of the accused also given statement against him. Notably, the parents, the wife of the deceased brother and other relatives of the petitioner are the crucial witnesses in this crime. If so, the apprehension expressed by the learned counsel for the defacto complainant and the learned Public Prosecutor is having force. It is pertinent to note that the petitioner is a person, who alleged to have committed the offence of murder and the persons murdered are his direct brother and uncle. If so, if he will be released on bail, the life of his parents and other relatives, who are crucial witnesses, will be in danger. It is shocking to note

that the petitioner even alleged to have given quotation to another accused involved in Crime No.1773/2021 of Police Station to annihilate the Investigating Officer, for which also, another crime was registered. Going by the principles extracted herein above, the aggravating factors are more in this case which would disentitle bail to the petitioner. Therefore, the petitioner herein does not deserve bail and trial shall be completed keeping him in custody, in order to accomplish fair trial.

Therefore, the petition fails and is accordingly dismissed, with direction to the learned Sessions Judge to expedite the trial and complete the same as scheduled, without fail.

*Sd/-*

**(A. BADHARUDEEN, JUDGE)**

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