

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 16TH DAY OF MARCH 2022 / 25TH PHALGUNA, 1943

TR.P(CRL.) NO. 18 OF 2022

AGAINST THE PENDING CRL.MC 405/2022 OF DISTRICT COURT, ERNAKULAM

PETITIONER/VICTIM'S FATHER:

KUNJARU C C
S/O.CHOTHI,AGED 67 YEARS
CHAYATTUNJALIL, KAVUNGALPARAMBU,
VENGOLA P O, ERNAKULAM, KERALA, PIN - 683 556

BY ADVS.BLAZE K.JOSE
URMILA ZACHARIA
GAUTHAM KRISHNAN

RESPONDENTS/RESPONDENTS/PETITIONERS/ACCUSED:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA,REPRESENTING BY SUB INSPECTOR OF POLICE,
KUNNATHUNAD POLICE STATION.
- 2 SAINUDHEEN
AGED 27 YEARS,S/O ABDUL SALAM
PARATTU HOUSE, CHELAKULAM
ERNAKULAM DISTRICT, PIN - 683 562
- 3 BASHEER
AGED 38 YEARS,S/O ALIYAR
NEDUGADAN HOUSE, CHELAKULAM
KAVUNGAPARAMB, ERNAKULAM DISTRICT, PIN - 683 562
- 4

ABDUL RAHMAN
AGED 36 YEARS, S/O ALIYAR
PARATTU HOUSE, CHELLAKULAM
KAVUNGAPARAMB, ERNAKULAM DISTRICT, PIN - 683 562

5 ASSIS
 AGED 45 YEARS, S/O VIRAN
 VILYAPARAMBIL HOUSE
 CHELAKULAM, KAVUNGAPARAMBU
 ERNAKULAM DISTRICT, PIN - 683562

 BY ADVOCATE GENERAL OFFICE KERALA
 DIRECTOR GENERAL OF PROSECUTION(AG-10)
 SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR

 THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR
 ADMISSION ON 16.03.2022, THE COURT ON THE SAME DAY DELIVERED THE
 FOLLOWING:

ORDER

Dated this the 16th day of March, 2022

This petition is filed by the father of the victim who died following an incident occurred on 12.02.22 at about 7.10 p.m. at Kavungalparambu, Chelakkulam kara, Pattimattom Village, Kizhakkambalam. The accused, four in numbers, arraigned in the case on hand had filed an application as Crl.M.C. No.405/2022 seeking bail before Court of Sessions, Ernakulam. The allegation was that the son of the petitioner was assaulted at 7.10 p.m. near his house by the accused who are activists of CPM, a political party, and died on account of the injury sustained.

2. The allegation of the petitioner in the application on hand was that though the bail application filed on 18.02.2022 was posted a number of times, despite oral demands made severally and demand made also through written objection filed before the Court on 09.03.2022, copies of the relevant records were not given to him. According to him, under Section 15A of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST (POA) Act') the victim or his dependent is entitled to get copies of relevant records pertaining to Crime No.106/22 in which bail application was moved, to defend it properly. According to him, the court responded to his oral demands by stating that the materials asked for are not necessary. According to him, his counsel was heard on 09.03.2022 but, the prosecutor was not directed by the court to furnish the copies of the relevant records pertaining to the crime.

3. It is further contended that the father of the judicial officer is the District Secretary of the political party to which the accused also belong. The learned counsel has also placed for perusal, some face book postings to establish that the judicial officer herself has some affinity to the political party in which the accused are activists. According to him, the above context has created an apprehension in his mind that he won't get a fair hearing in the bail application.

4. According to the learned Senior Public Prosecutor, there is no basis for the apprehension of the petitioner. According to him, petitioner cannot have such an apprehension of bias from

the judicial officer for the mere reason that copies were not served on him. According to him, for the reason that father of the judicial officer seized of the bail application is holding a post in a political party, the officer cannot be doubted for bias. According to him, if an order for transfer of the bail application from the said court to another court is passed in the context, it would set a bad precedent. It is further contended that the offences alleged in the crime being those coming within the purview of the SC/ST(POA) Act, Special Court constituted under the Act alone will have jurisdiction to entertain the bail application and the court being the only one in the District, the judicial officer though has a mind to avoid it, she is helpless being disempowered to transfer it to Special Courts situated in other Districts.

5. Sri.K.S. Arunkumar, the counsel for the accused who entered on the admission day of the transfer petition has submitted that, the allegations made in the transfer petition are false. According to him, the court on the first day of hearing of the bail application itself had directed him to serve the copies of the relevant records of the prosecution case to the counsel for

the petitioner and those were furnished also. According to him, allegations raised being devoid of merits, the transfer sought, may not be ordered by this Court.

6. The object behind enactment of the SC/ST (POA) Act, 1989 is as follows :

"An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts and the Exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto."

Chapter IV-A of the Act provides for right of victims and witnesses coming under the purview of the Act.

7. Section 15A incorporated under Chapter IV-A reads :

"15A. Rights of victims and witnesses.--(1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victims age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses--

(a) the complete protection to secure the ends of justice;

(b) the travelling and maintenance expenses during investigation, inquiry and trial;

(c) the social-economic rehabilitation during investigation, inquiry and trial; and

(d) relocation.

(7) The State shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders.

(8) Without prejudice to the generality of the provisions of sub-section (6), the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including--

(a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public;

(b) issuing directions for non-disclosure of the identity and addresses of the witnesses;

(c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection:

Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint:

Provided further that where the complaint under clause (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.

(9) It shall be the duty of the Investigating Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and a photocopy of the First Information Report shall be immediately given to them at free of cost.

(10) All proceedings relating to offences under this Act shall be video recorded.

(11) It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as--

(a) to provide a copy of the recorded First Information Report at free of cost;

(b) to provide immediate relief in cash or in kind to atrocity victims or their dependents;

(c) to provide necessary protection to the atrocity victims or their dependents, and witnesses;

(d) to provide relief in respect of death or injury or damage to property;

(e) to arrange food or water or clothing or shelter or medical aid or transport facilities or daily allowances to victims;

(f) to provide the maintenance expenses to the atrocity victims and their dependents;

(g) to provide the information about the rights of atrocity victims at the time of making complaints and registering the First Information Report;

(h) to provide the protection to atrocity victims or their dependents and witnesses from intimidation and harassment;

(i) to provide the information to atrocity victims or their dependents or associated organisations or individuals, on the status of investigation and charge sheet and to provide copy of the charge sheet at free of cost;

(j) to take necessary precautions at the time of medical examination;

(k) to provide information to atrocity victims or their dependents or associated organisations or individuals, regarding the relief amount;

(l) to provide information to atrocity victims or their dependents or associated organisations or individuals, in advance about the dates and place of investigation and trial;

(m) to give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organisations or individuals and to provide the legal aid for the said purpose;

(n) to execute the rights of atrocity victims or their dependents or associated organisations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.

(12) It shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organisations, social workers or advocates.”

8. Sub-Section (3) to (5) safeguard the rights of a victim or his dependent to have reasonable, accurate and timely notice of any proceedings of the court of law including any bail proceeding and the State Government or the Special Public Prosecutor is obliged by the provision to inform the victim of the proceedings under the Act.

9. Similarly, sub-section (4) entitles the victim or his dependent to apply to the special court or Exclusive Special Court to summon parties for production of any documents or material, witnesses or to examine the persons present.

10. Sub-section (5) safeguards the right of the victim or his dependent to be heard in any proceedings under the Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

11. The above provisions are incorporated in the SC/ST(POA) Act to secure complete justice to the victim coming within the purview of the Act, taking into account of the social

and economic backwardness he was constrained to face in the society for being a member of SC/ST caste.

12. Therefore, the court as well as the public prosecutor being the machineries authorised by the Act to afford the necessities to them in their pursuit to get absolute justice, must follow the directions under Section 15A especially under sub-sections (3) to (5) extracted above. It is the duties of the machineries mentioned above to see that the rights ensured to the victim or his dependent under the SC/ST (POA) Act are to be protected and the fruits are enjoyed by them.

13. In the case on hand, the allegation against the judicial officer being that she failed to direct service of relevant records pertaining to the prosecution case, despite oral as well as written demands, this Court issued a direction to the Court concerned to produce the records pertaining to Crl.M.C pending before it. The learned Public Prosecutor was directed to produce the case diary also.

14. Accordingly the documents called for are submitted to this Court. From the proceedings of the Court noted on the bail application, it was found that the bail application was filed on

18.02.2022 and the first order in the bail application was passed by the Court on 22.02.2022. On 22.02.2022 the court adjourned the bail application for hearing to 25.02.2022. on 25.02.2022, the father of the victim (deceased) appeared before the court through Adv.Blaze Jose. Since the petitioner sought for time, the case was adjourned to 04.03.2022 for hearing. On 04.03.2022 petitioners sought for time for hearing and hearing was adjourned to 07.03.2022. On 07.03.2022 petitioners again sought for time for hearing and posted to 09.03.2022. On 09.03.2022 petitioners were heard and the bail application was adjourned for hearing the learned Public Prosecutor to 11.03.2022 on that day, the counsel for the dependent of the victim filed an affidavit stating that a petition seeking transfer of the bail application from that court to some other court is filed before this Court. Thereupon, hearing of the bail application was adjourned by the court to 15.03.2022.

15. Having gone through the proceedings of the said court, this Court has every reason to believe that copies of records of the prosecution case necessary to defend the bail application were not directed by the court concerned to be served on the

dependent of the victim who appeared before the Court on 25.02.2022, through a counsel. It appears that the judicial officer failed even to inform the dependent of the victim about the filing of the bail application by the accused in the crime registered following the death of his son. Therefore, there is clear violation by the court of a duty cast upon it, being a machinery of the State Government to see that the dependent is informed of the pendency of the bail application for its consideration. Therefore, the court being the machinery of the State empowered to impart justice to its citizens, it is duty bound to protect the rights reserved by the various provisions of an enactment, like the one on hand.

16. In the case on hand the court is obliged by the directives in Section 15A to inform about the pendency of the bail application to the victim or his dependent, to serve the relevant documents, if demanded by him relating to his case, and to summon any document or witnesses of his choice in his pursuit to defend the proceedings before it.

17. In the case on hand, the father of the deceased victim appeared before the Court without a notice being served from

the court through the public prosecutor. He appeared on his own through a counsel engaged by him.

18. According to the learned counsel he made several oral requests to the court to serve copies of relevant documents to him. Therefore, the Court has to see that those are served on him by the learned Public Prosecutor. The proceedings of the Court neither reveal that such oral requests were made by the learned counsel representing the father of the victim nor that a direction to the effect was issued by the Court to the Public Prosecutor in that regard. However, a written objection was found in the records of the case, submitted by the learned counsel for the father of the victim, apprising the court about the filing of the petition seeking transfer before this Court. It was also mentioned by the learned counsel in the objection that copies of the relevant records sought were not made available to him. The bail application was recorded as heard on 09.03.2022. The case was adjourned for hearing of the learned Public Prosecutor without issuing a direction to him to meet the demand of the father of the victim. The learned Public Prosecutor also failed to furnish the copies of the records sought.

19. From the face book pages furnished for perusal this Court has noticed that the judicial officer has some affinity to the party to which the accused also belong. The victim belong to a rival political party. The court also failed to issue a direction to the learned Public Prosecutor to serve the relevant records demanded by the counsel representing the father of the victim. For a fair hearing opportunity to be afforded, supply of relevant materials if demanded is very much necessary.

20. In the above context, the victim being a member of a rival political party, there is basis for the apprehension of the father of the victim that he won't get a fair hearing in the bail application filed by the accused in the crime. It is found that notice of the pendency of the bail application was not given. Despite making a written objection incorporating the grievance of non-receipt of relevant records of the case by the father of the victim, the court failed to direct the learned Public Prosecutor to serve copies to him. Therefore, this Court is constrained to take a view that the apprehension of the father of the victim has some basis.

21. When an allegation of bias is raised against a judicial officer, this Court has also got a duty to protect the officer concerned. The counsel for the accused has resisted the claim for transfer of the bail application from the court concerned, vehemently. This Court finds no basis for such a resistance for the very reason that no prejudice would be caused to him by the transfer, lest, it would afford only fairness to the proceedings and protection to the judicial officer from unnecessary allegations.

22. The Apex Court in Nahar Singh Yadav and another v. Union of India and others [(2011) 1 SCC 307] has held :

"A criminal trial is a judicial examination of evidence with the object of punishing the offenders on a proper proof of relevant facts, the core question being the guilt or innocence of the accused. Hence, a criminal trial, which may result in depriving a person of not only his personal liberty but also his life has to be unbiased, and without any prejudice for or against the accused. An impartial and uninfluenced trial is the fundamental requirement of a fair trial, the first and the foremost imperative of the criminal justice delivery system. If a criminal trial is not free and fair, the criminal justice system would undoubtedly be at stake, eroding the confidence of a common man in the system, which would not augur well for the society at large. Therefore, as and when it is shown that the public confidence in the fairness of a particular trial is likely to be seriously undermined, for any

reason whatsoever, Section 406 Cr.P.C empowers the Supreme Court to transfer any case or appeal to meet the ends of justice.”

23. Therefore, when there is an apprehension in the mind of a party approaching the court that fairness of hearing be undermined, this court is empowered to transfer the proceeding affecting him to some other court for consideration and passing of appropriate orders therein, in accordance with law.

In the result, transfer petition is allowed. The District and Sessions Court, Ernakulam which is established as the Special Court under Section 14 of the SC/ST (POA) Act shall transmit all records of the bail application to the Principal Court of Sessions, Thrissur (Special Court, Thrissur) for its consideration there. Special Court, Thrissur when it seized of the records, shall pass orders in the bail application, after being ensured that the copies of relevant records sought for by the petitioner herein are served on him and affording a fair opportunity of being heard to both sides, within four days of receipt of the records.

**Sd/-
MARY JOSEPH,
JUDGE.**

APPENDIX OF TR.P(CRL.) 18/2022

PETITIONER'S ANNEXURES :

- Annexure1 A TRUE COPY OF THE APPLICATION FOR BAIL FILED BY THE ACCUSED 1 TO 4 AS CRL.M.C. NO. 405 OF 2022 PENDING BEFORE THE PRINCIPAL DISTRICT & SESSIONS COURT, ERNAKULAM
- Annexure2 A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN CRL.M.C. NO. 405 OF 2022 DATED 09.03.2022