

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 13TH DAY OF JANUARY 2022 / 23RD POU SHA, 1943

BAIL APPL. NO. 144 OF 2022

CRIME NO.621/2021 OF MANNANCHERY POLICE STATION, ALAPPUZHA

DISTRICT

PETITIONERS/ACCUSED NOS.8, 12 & 13:

- 1 AKHIL,
AGED 30 YEARS
S/O.PONNAN, NIKARTHIL VEEDU, CHERTHALA P.O.,
SOUTH OF ANJILIPALAM, WARD NO.27, CHERTHALA.
- 2 SUDHEESH
AGED 49 YEARS
S/O.THANKAPPAN, VATTAKETTAY, KALLANKUNNEL VEEDU,
KUTTITHADY P.O., WARD NO.11, THRIKOOR PANCHAYATH,
MUKUNDAPURAM TALUK, THRISSUR.
- 3 UMESH
AGED 27 YEARS
S/O.UNNIKRISHNAN, MANGALATH VEEDU, MUTTITHADY P.O.,
THRIKOOR PANCHAYATH WARD-11, MUKUNDAPURAM TALUK,
THRISSUR.

BY ADVS.
P.VIJAYA BHANU (SR.)
P.M.RAFIQ
M.REVIKRISHNAN
MITHA SUDHINDRAN
RAHUL SUNIL
SRUTHY N. BHAT
AJEESH K.SASI

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

BY ADVS.
SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR

SRI. SAJJU. S. (SR.PP)

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
13.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This is an application for regular bail.

2. Petitioners are accused Nos.8, 12 and 13 in Crime No.621 of 2021 of Mannanchery Police Station, Alappuzha District. The said crime has been registered alleging commission of offences under Sections 143, 147, 148, 324, 302, 212, 120(B) read with Section 149 of the Indian Penal Code.

3. The prosecution case is that accused Nos.1, 7, 14 and 15 entered into a criminal conspiracy with accused Nos.2 to 6 to murder one Shan and on 18.12.2021, they attacked the aforesaid Shan with deadly weapons and as a result of which, he succumbed to his injuries. In so far as petitioners herein are concerned, the allegations against the 1st petitioner (8th accused) is that at the instruction of accused No.15 he helped to transport the accused persons or some among them from Pullamukulam on 19.12.2021 in an ambulance of which he is the driver. The allegation against the 2nd petitioner (accused No.12) is that he helped to harbour the accused persons in his wife's house at Thrissur and the allegation against the 3rd petitioner (accused No.13) is that he helped in

providing food for the accused persons, while they were holed up in Thrissur.

4. Sri.P.Vijayabhanu, the learned Senior Counsel appearing for the petitioners on the instructions of Ms.Sruthy N Bhat would contend that clearly the petitioners are entitled to bail in as much as the only offence which could lie against them is that under Section 212 of the Indian Penal Code, which is at any rate a bailable offence. It is pointed out that even according to the prosecution, the petitioners in this bail application were not part of the conspiracy and at best the prosecution case is that they helped to harbour the accused persons. The learned Senior Counsel for the petitioners has also relied on the judgment of the Supreme Court in **Rasiklal v. Kishore** [2009(4) SCC 446] to contend that where an accused is alleged to have committed only a bailable offence, it is his right to be released on bail and relies on the following observation in the aforesaid judgment.

“There is no doubt that under Section 436 of the Code of Criminal Procedure a person accused of a bailable offence is entitled to be released on bail pending his trial. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give

bail, is bound to release him on such terms as to bail as may appear to the officer or the Court to be reasonable. It would even be open to the officer or the Court to discharge such person on his executing a bond as provided in the Section instead of taking bail from him.”

5. The learned Public Prosecutor has placed before me a report submitted by the Deputy Superintendent of Police, C Branch, Alappuzha. He has taken me through the contents of the report and has explained the details of the conspiracy and the gruesome manner in which the murder was committed. It is submitted that the murder was pre-planned and was on account of political rivalry. It is pointed out that the grant of bail to the petitioners may not be conducive as there is every chance of a retaliatory attack and the law and order situation in the area is still volatile. However, it is submitted that the investigation conducted thus far does not show that the petitioners were part of the original conspiracy.

6. Having regard to the facts and circumstances of the case and considering the submissions of the learned Senior Counsel appearing for the petitioners and the learned Public Prosecutor for the State and after having perused the contents of

the report placed by the Deputy Superintendent of Police, C Branch, Alappuzha and keeping in mind the ratio laid down in **Rasiklal** (*supra*), I am of the opinion that the petitioners are entitled to bail especially on account of the fact that as things stand today, the only allegation against them is that of having committed an offence under Section 212 of the Indian Penal Code which, it is not disputed, is a bailable offence. However, considering the submission of the learned Public Prosecutor that the release of the petitioners on bail may result in a retaliatory attack and considering his submission that the law and order situation in the area is still volatile, I am of the opinion that certain conditions can be imposed while granting bail to the petitioners.

7. In the result, this bail application is allowed and it is directed that the petitioners shall be released on bail subject to the following conditions:

- (1) Petitioners shall execute bonds for sums of Rs.50,000/- (Rupees Fifty Thousand) each with two solvent sureties each for the like sum to the satisfaction of the Jurisdictional Court;
- (2) Petitioners shall report before the investigating officer in Crime No.621 of 2021 of Mannanchery Police Station, Alappuzha District, as and when called upon to do so;

(3) Petitioners shall not enter the Alappuzha District, except for the purpose of complying with any instruction issued by the investigating officer in Crime No.621 of 2021 of Mannanchery Police Station, Alappuzha District;

(4) Petitioners shall not attempt to or to influence or intimidate any witness in Crime No.621 of 2021 of Mannanchery Police Station, Alappuzha District;

(5) Petitioners shall surrender their passport before the Jurisdictional Magistrate. If they or anyone among them do not have a passport an affidavit shall be executed to that effect and filed before the said court within seven days of release on bail;

(6) Petitioners shall not involve in any other crime while on bail.

If any of the aforesaid conditions are violated, the investigating officer in Crime No.621 of 2021 of Mannanchery Police Station, Alappuzha District, may file an application before the Jurisdictional Court for cancellation of bail.

Sd/-
GOPINATH P.
JUDGE