

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
TUESDAY, THE 12TH DAY OF APRIL 2022 / 22ND CHAITHRA, 1944

BAIL APPL. NO. 2722 OF 2022

CRIME NO.2847/2019 OF Kundra Police Station, Kollam

PETITIONER/ACCUSED:

ANEESHKUTTY
AGED 32 YEARS
S/O ALIYARUKUTTY, KUNNUMPURATHU PUTHEN VEEDU,
KARIMPINKARA, KERALAPURAM, PERUMPUZHA P.O,
PUNUKKANNOOR CHERRY, ELAMPALLOOR VILLAGE, KOLLAM, PIN
- 691501

BY ADVS.
DIPU.R
L.LINTON
K.S.BAIJU
DEVI KRIPA R.
P.V.SARITHA VENUGOPAL
DHANYA BABU

RESPONDENTS/STATE & INVESTIGATING OFFICER:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM - 682031
- 2 STATION HOUSE OFFICER
KUNDRA POLICE STATION, NH744, ELAMPALLOR, KUNDRA P.O,
KOLLAM, PIN - 691501
- 3 ADDL.R3 ,
THE DIRECTOR, FORENSIC SCIENCE LAB,
THIRUVANATHAPURAM, IS SUO MOTU IMPEADED AS ADDL.R3
AS PER ORDER DATED 06/04/2022 IN B.A.NO.2722/2022.

BY
SRI.C.K.SURESH, SR PUBLIC PROSECUTOR

ADDL.DIRECTOR GENERAL OF PROSECUTION (AG-11)

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12.04.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The above-captioned application seeking regular bail has been filed under Section 439 of the Code of Criminal Procedure ("Code" for short) by the accused in Crime No.2847 of 2019 of the Kundara Police Station, registered under Section 302 of the IPC. The case is pending trial before the Additional Sessions Judge-VI, Kollam as S.C.No. 191/2021. The petitioner was arrested in connection with the crime on 11.12.2019 and he remains in custody. His earlier applications were dismissed by this Court by orders dated 22.6.2020 and 3.12.2020. Later, though he approached the Court of Session, he has not met with any success and has been languishing in custody since then.

2. The prosecution case, in brief, is as follows:

Shajila was a 42 year old married woman whose husband was working abroad. She had two children aged 17 years and 8 years respectively. The prosecution alleges that the petitioner used to constantly harass the lady, abuse her and hurl threats as she did not agree to his request to have a relationship. A crime was registered as Crime No.735 of 2018 at the Kundara Police Station when the petitioner entered the house of Shino, where Shajila had gone for a party and assaulted her. On 11.12.2019, Shajila came out of her home to see off her children, who were on their way to school. The petitioner came there on a bike

and picked up an altercation with the lady. He had carried weapons and chilly powder with him. When Shajila thwarted his advances, he got down from his bike and at about 9 am, pushed her down and with the sharp cutting knife, which he had in his possession, inflicted as many as 40 injuries on the lady. The incident was allegedly witnessed by CW2 Aneez and CW 27 Hayrunnisa. Portions of the incident were witnessed by several others. The prosecution has cited as many as 25 witnesses of the locality to prove its case.

3. Sri. Dipu R., the learned counsel appearing for the petitioner submitted that though this Court had directed the Sessions Court to expedite the trial proceedings, nothing worthwhile has happened thereafter. As is evident from the order passed by the Court of Session, the trial could not be commenced as the Material Objects are yet to be analysed by the Forensic Science Laboratory. The Director of the Forensic Science Lab has reported that the examination can be expedited but he has not given a time frame. It is further submitted by the learned counsel that the petitioner is suffering from severe psychiatric disease, a painful skin ailment known as Psoriasis Vulgaris and has also been diagnosed with Grade-II Haemorrhoids. It is submitted that an enquiry was conducted by the learned Sessions Judge under sections 329 and 330 of the CrPC and after examining the witnesses, it was found that the medical insanity of the accused is prima facie proved. As the legal insanity of the accused can be considered only at the stage of the trial, it would be a travesty of justice to keep a mentally insane

person in prison. His mother and near relatives are prepared to take care of the petitioner and unless he is released on bail, it would not be possible for them to provide good medical care and attention. Reliance is placed on Annexure-4 letter issued by the Superintendent, Mental Health Center, Thiruvananthapuram, to bring home the point that the petitioner has been diagnosed with Bipolar Mood Disorder.

4. Sri.C.K. Suresh, the learned Senior Public Prosecutor, has stoutly opposed the prayer. It is submitted that a lady was murdered by the petitioner in a barbaric manner. It is submitted that steps can be taken to expedite the examination of the Material Objects so that trial can be commenced without delay. It is further submitted that the best possible medical care is being given to the petitioner. Relying on the order passed by the learned Sessions Judge, it is submitted that the petitioner is fit to stand trial and in view of the above, there is no reason to show any leniency to the petitioner. He would deny that the condition of the petitioner is in such bad shape that he requires constant care and attention from his family members. It is further submitted that if the petitioner is released on bail, he may intimidate the witnesses and thwart the course of justice.

5. I have anxiously considered the submissions and have perused the records. There cannot be any doubt that the allegations levelled against the petitioner in the final report submitted before the court is extremely grave. However, the fact remains that the petitioner has been in custody since

11.12.2019. Though this Court had directed the prosecution to expedite the trial, even as of date, the report from the Forensic Science Lab has not been forwarded to the Court of Session.

6. When the bail application had come up for consideration on 6.4.2022, this Court had suo motu impleaded the Director, Forensic Science Lab, Thiruvananthapuram, to state before this Court the time frame within which the analysis of the Material Objects can be completed. The Registry was also directed to obtain a report from the learned Sessions Judge with regard to the demeanour and physical condition of the petitioner and also the time frame within which the trial can be completed after receipt of the analysis report from the Forensic Science Lab.

7. The Director of Forensic Science Lab has reported that in view of the urgency, the report of the Examination can be submitted before 30.4.2022.

8. The Sessions Judge has reported that the trial can be completed within a period of six months from the date of receipt of the report from the FSL.

9. The Superintendent of the Central Prison and Correctional Home has placed before this Court, the Medical Report of the petitioner. The said report reveals that the petitioner is suffering from Psoriasis Vulgaris, Scalp Psoriasis, Psychiatric disease and Grade-II Haemorrhoids. It is also stated that the petitioner

has been diagnosed as a case of Bipolar Affective Disorder (BPAD) and he is continuously being treated. BPAD is also known as a manic-depressive illness characterised by recurrent cyclic episodes of mania and depression. The report also says that he would require treatment all throughout his life.

10. Sri. R. Dipu, the learned counsel submits that the mother, as well as near relatives of the petitioner, are willing to accommodate the petitioner out of the District and to provide him with treatment for the ailments which he is suffering at present. I also find that there is every likelihood that the trial would get prolonged further.

11. As held by the Apex Court in **Sanjay Chandra v. CBI** [(2012) 1 SCC 40], the fundamental postulate of criminal jurisprudence is the presumption of innocence, that is a person is believed to be innocent until found guilty and it would be contrary to the concept of personal liberty if any person should be punished before conviction in respect of any matter or under any circumstances, upon the belief that he will tamper with the witnesses if left at liberty. Any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an under trial for the purpose of giving him a taste of imprisonment as a lesson. The Hon'ble Apex Court in **Dataram Singh v. State of Uttar Pradesh** [(2018) 3 SCC 22]

had held that grant of bail is the general rule and putting a person in jail or prison is an exception. Even though the grant or denial of bail is entirely the discretion of the Judge, in the facts and circumstances of each case, the exercise of judicial discretion has been circumscribed by the decisions of the Apex Court as well as this Court. The jurisdiction must be exercised judiciously, in a humane manner and compassionately without being carried away by the severity of the allegations. In **State of Kerala v. Raneef** [(2011) 1 SCC 784], it was held that when under-trial prisoners are detained in jail custody for an indefinite period due to the delay in concluding the trial, Article 21 of the Constitution is violated.

12. The petitioner is a seriously sick person suffering from Bipolar Affective Disorder. The Sessions Judge has conducted an enquiry under Section 329 and 330 of the CrPC and has come to the prima facie conclusion that the petitioner is suffering from medical insanity. The fact that the petitioner was suffering from BPAD was not brought to the notice of this Court when the earlier bail applications were filed.

13. An accused who seeks exoneration from liability of an act under Section 84 of the Penal Code is to prove legal insanity and not medical insanity. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he

suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer, are not sufficient to attract the application of Section 84 of the Penal Code. The fact that the petitioner is suffering from legal insanity has to be proven by him at the stage of the trial.

14. At this stage, we are not concerned if the accused is ultimately able to prove mental insanity. The only consideration is whether a mentally sick person needs to languish in prison due to the inability of the criminal justice system to expedite the trial. The trial has been delayed due to the failure of the Forensic Science Lab in forwarding the reports to the Court of Session. The Court of Session cannot be faulted as it would not be possible to commence the trial without the analysis reports.

15. The entitlement of the accused to a speedy trial has been repeatedly emphasised by the Apex Court and though not enumerated as a fundamental right in the Constitution, the same has been recognized to be implicit in the spectrum of Article 21. In **Hussainara Khatoon (I) v. Home Secy., State of Bihar** [1980 1 SCC 81], the Court while dealing with the cases of undertrials who had suffered long incarceration held that a procedure that keeps such large number of people behind bars without trial for so long cannot possibly be regarded as reasonable,

just or fair so as to be in conformity with the requirement of Article 21.

16. Forensic Science is an indispensable branch of jurisprudence and is considered one of the most deadly weapons in the armoury of the investigator. We cannot shut our eyes to the ways in which Forensic science is used for the detection of crime in other developed countries. As we have not invested our time and effort in establishing cutting edge labs and in employing skilled scientific officers to aid in all phases of the criminal investigation process, the acquittal rate is alarmingly high. The common refrain that we hear in Court is that Labs are working far beyond their capacity and thousands of samples forwarded much earlier are yet to be tested. It is common knowledge that thousands of samples are lying in labs and it would take years to analyse the same. The pendency in the labs is mind boggling. The less said the better. Obviously, a State like Kerala where the crime rate is high requires enough labs with highly skilled Scientific Officers and state-of-the-art equipment. The report from the FSL and the Chemical Examiners Lab form the backbone of the prosecution case. Testing of samples must be swift, efficient and accurate and the report has to reach the Courts as expeditiously as possible. It has to be ensured that a sample forwarded to the Lab is analysed and a report forwarded to the Court within an outer limit of three weeks at the most. If reports are delayed as has happened in this case, the only conclusion that can be arrived at is that the system has collapsed and needs

resuscitation.

17. It is high time that the State woke up and set up enough Forensic Science/ Chemical Laboratories in the State and spruced up the infrastructure and employed technical personnel to ensure that reports are provided to the Court within three weeks from the date of furnishing of the sampling.

18. Coming back to the facts of the instant case, having regard to the entire facts and circumstances, which include the period of incarceration undergone by the petitioner, the physical and mental ailments that the petitioner is suffering, the reasonable possibility of securing his presence at the stage of trial and the reasonable apprehension of the witnesses being tampered with, I am of the view that the further detention of the petitioner in custody is not necessary. He can now be granted bail by imposing stringent conditions. It is made clear that any expression of opinion for the purpose of deciding this bail application shall not be regarded as an expression on the merits of the case.

Resultantly, this application will stand allowed. The petitioner shall be released on bail on his 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. The above order shall be subject to the following conditions:

- 1) The petitioner shall not intimidate or attempt to influence the witnesses; nor shall he tamper with the evidence.

2) The petitioner shall not commit any similar offence while on bail.

3) The petitioner shall not enter the limits of the revenue district of Kollam except for appearing before the Court of Session. This condition can be modified by the Court of Session at the appropriate stage.

4) The petitioner shall not leave the State of Kerala without seeking previous permission from the court having jurisdiction.

5) The petitioner shall not leave India without the permission of the Court. If the petitioner possesses a passport, he shall deposit the same before the Trial Court within a week; If the release of the passport is required at a later period, the petitioner shall be at liberty to move appropriate application before the Court having jurisdiction.

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

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**