

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 31ST DAY OF AUGUST 2022 / 9TH BHADRA, 1944

BAIL APPL. NO. 6180 OF 2022

**AGAINST THE ORDER/JUDGMENTCP 24/2021 OF JUDICIAL MAGISTRATE OF FIRST
CLASS -III, NEYYATTINKARA**

PETITIONER/S:

ARUN
AGED 29 YEARS
S/O SASIDHARAN, PLANKALA PUTHEN VEEDU
THRESSIAPURAM, KUNNATHUNKAL, FROM
ARUN BHAVAN, PATHAMAKALLU
ATHIYANNOOR VILLAGE, KERALA- 695 123, PIN - 695123

BY ADVS.
RENJITH B.MARAR
LAKSHMI.N.KAIMAL
ARUN POOMULLI
MEERA JOPPAN

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN
- 682031
- 2 FELIX.C
S/O.CHRISTUDAS, PLANKALA PUTHENVEEDU, THRESYAPURAM,
KARAKONAM POST, THIRUVANANTHAPURAM DISTRICT.

BY ADVS.

AJIT G ANJARLEKAR
G.P.SHINOD
GOVIND PADMANAABHAN
ATUL MATHEWS

OTHER PRESENT:

0

PP SRI.NOUSHAD K.A

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31.08.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

=====
Bail Application No.6180 of 2022

Dated this the 31st day of August, 2022

ORDER

Petitioner is the accused in Crime No.2787/2020 of Vellarada Police Station, alleging offences punishable under Section 302 of the Indian Penal Code,1860.

2. The prosecution allegation is that petitioner, a man of 29 years had married a wealthy lady of 51 years on 19.10.2021 and with an intention to grab her wealth, smothered and electrocuted his wife on 26.12.2022 and thereby committed the offences alleged. The prosecution further alleges that the incident commenced with the deceased demanding for a child through the petitioner and in the quarrel that ensued, petitioner gagged her mouth and nose and when she became unconscious, dragged her near a switch board and wrapped one end of the wire which was connected to a bulb on to her wrist and thus electrocuted her and thereby caused her death.

3. Petitioner was arrested on the next day itself and the bail application was also rejected by this Court on 23.03.2021 as per the order in BA No.1919/2021. However, on 03.04.2021, just ten days after this Court rejected the bail application, the learned Magistrate granted bail to the petitioner, that too without imposing any conditions. The bail was granted, presumably, due to change of circumstances, as the final report was filed on

22.03.2021, and this Court had not been appraised of the same when the bail application was rejected on 23.03.2021.

4. The State sought for cancellation of the bail before the Sessions Court, through Crl.R.P. No.13/2022, while the defacto complainant, who is the grandmother of the deceased, moved an application before this Court as Crl.M.C. No.2541/2021 seeking cancellation of bail.

5. The learned Sessions Judge, by order dated 10.06.2022 in Crl.R.P.No.13/2022 , after noticing the illegality in the order of the learned Magistrate, in granting bail in a case triable by a court of sessions, that too after the High Court had rejected the bail, and relying upon the decision in ***Jayaraj Vs.State of Kerala*** [2009 (5) KHC 577 cancelled the bail granted to the petitioner.

6. Petitioner ought to have surrendered thereafter. However, without surrendering, petitioner approached this Court through Crl.M.C. 4067/2022 and by order dated 29.07.2022, a learned Single Judge of this Court affirmed the order cancelling the bail, but observed that the petitioner is at liberty to file an application for regular bail, invoking Section 439 of the Cr.PC, either before this Court or before the Sessions Court, within a period of ten days and further directed that the petitioner shall not be arrested till the said bail application is disposed of. Pursuant to the aforementioned order, this bail application was preferred.

7. When the matter came up for consideration initially, this Court expressed the doubt on the maintainability of the bail application itself, since

the petitioner had not surrendered and the elementary principle of the requirement of the accused 'to be in custody' for applying for regular bail was pointed out.

8. Sri.Renjith B Marar, learned Counsel for the petitioner referring to the decision of the Supreme Court in ***Sundeeep Kumar Bafna Vs. State of Maharashtra and Another [(2014) 16 SCC 623]*** and submitted that, surrender before the High Court can, in exceptional circumstances, be deemed to be sufficient to enable consideration of the regular bail application. In view of the aforesaid proposition, this Court directed the petitioner to surrender before this Court for considering the bail application. Accordingly, the petitioner has presented himself before this Court today.

9. I have heard the learned Counsel for the petitioner as well as Sri. Ajit G Anjarleker, learned Counsel for the defacto complainant and Sri.K.A.Noushad, learned Counsel for the respondent.

10. Sri.Renjith B Marar, learned Counsel for the petitioner contended that, even if the petitioner was granted bail by a wrong order of the Magistrate, the same is not a reason to deny him bail at this juncture, especially since a long period of time has elapsed from the initial grant of bail. It was pointed out that the possibility of trial being completed in the near future is remote and that since there is no allegation of the petitioner having influenced or intimidated the witnesses, he ought to be released on bail. Relying upon the decision in ***Ashok Kumar Vs.State of Uttar Pradesh and Another [(2009) 11 SCC 392]***, it was submitted that

considering the long length of time in which the petitioner was on bail, the continuance of the same, would only be appropriate in the circumstances.

11. Sri. Ajit G Anjarleker, learned Counsel for the defacto complainant contended that the severity of the crime and the ghastly manner in which the same was executed and the various other peculiar circumstances arising in the instant case requires the court to deny bail to the petitioner. It was further submitted that granting bail at this juncture would sent a wrong message to the society, especially since the petitioner has been the beneficiary of a wrong order, that too, for more than one year and five months.

12. The learned Public Prosecutor also opposed the grant of bail and contended that the attending circumstances and the manner of commission of the offences and the brutality, surrounding the commission of offence must weigh with the court while considering the grant of bail and according to him, this is a fit case where custodial trial is essential. The learned Public Prosecutor also submitted that the accused is a wealthy person and highly influential and that he is capable of influencing and even intimidating the witnesses and on that ground also, he is not entitled to be released on bail.

13. I have perused the case diary.

14. The circumstances prima facie reveal the commission of a ghastly crime. The petitioner, a young man of 29 years is alleged to have married the 51 year old deceased on 16.10.2020 and within two months ie; on 26.12.2020, when she pleaded with him for begetting a child as any wife

would expect, he smothered and electrocuted her to death, due to his avarice. He is also alleged to have obtained various financial benefits out of the marriage and to further strengthen his financial position, he is alleged to have committed the murder.

15. The facts pointing to the guilt of the accused is a matter to be considered by the trial court at the stage of trial. Though the petitioner is benefited out of an illegal order of the Magistrate by granting him bail on 03.04.2021, while considering an application for regular bail after cancellation, this Court ought not to be swayed by the illegality of the order granting bail to the petitioner on 03.04.2021. Though it is difficult to ignore the aforesaid illegality, rules of law and justice require it to be so.

16. Neither the Counsel for the defacto complainant, nor the Public Prosecutor could bring to the notice of this Court, any peculiar circumstances, other than the severity of the crime and the illegality of the initial order granting bail to the petitioner, as reasons to deny bail to him at the present juncture. Surprisingly, for the last one and a half years, the case is pending in the committal stage and therefore, the possibility of the trial happening in the immediate future is also remote.

17. As rightly contended by the learned Counsel for the petitioner, bail is the rule and jail is an exception as recently reiterated by the Supreme Court in the decision in ***Satender Kumar Antil v. Central Bureau of Investigation and Another (2021) 10 SCC 773***. Similarly the considerable length of time during which the petitioner has been on bail and the absence of any

circumstances like intimidation or threatening of witnesses must also weigh with the court while considering the grant of bail.

18. Though an unmerited exercise of discretion in the grant of bail, especially in an offence relating to murder, can shake the confidence of society, the observations of the Supreme Court in ***Ashok Kumar v. State of Uttar Pradesh [(2009) 11 SCC 392]*** is a pointer to the course of action to be adopted.

19. Every murder is foul and the accused does not deserve any leniency. However, the principle of law that 'an accused is presumed to be innocent until proven guilty, still runs as a golden thread in our criminal jurisprudence. It was submitted across the Bar that as many as 60 witnesses are to be examined and the case is still lying at the committal stage, thereby rendering the possibility of an early trial very remote. Further, this Court had also, while affirming the order cancelling the bail granted to the petitioner, directed him not to be arrested. Considerable length of time, during which the petitioner was on bail is certainly a matter, which requires due consideration by this Court.

20. Taking note of the aforesaid circumstances, I am of the view that, since petitioner has been on bail for the last one year and five months, in order to meet the ends of justice, and the requirement of law, he ought to be granted bail, pending trial. The process and the manner in which the petitioner was granted bail initially, though certainly perverse and against law, the basic principles of grant of bail in a criminal trial cannot be ignored, despite the

above illegality brought about by a wrong order.

21. In such circumstances, I am of the view that the petitioner ought to be released on bail pending trial. However, strict conditions should be imposed.

22. Therefore, I direct the petitioner to be released on bail on the following conditions:

- (a) Petitioner shall be released on bail on his executing a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the Judicial First Class Magistrate-III, Neyyattinkara where the committal proceedings are pending.
- (b) The petitioner shall appear before the Investigating Officer, once every month, until trial is completed.
- (c) Petitioner shall not enter into the jurisdictional limits of the Vellarada Police Station, Thiruvananthapuram, except for the purpose of abiding by the conditions imposed in this order.
- (d) Petitioner shall co-operate with the trial of the case.
- (e) Petitioner shall not intimidate or attempt to influence the witnesses; nor shall he tamper with the evidence or contact the defacto complainant or the family members of the deceased .
- (f) Petitioner shall not commit any similar offences while he is on bail.
- (g) Petitioner shall not leave India without the permission of the Court having jurisdiction.

(h) Petitioner is given the liberty to execute the bail bonds within three days from today and at any rate on or before 03.09.2022.

23. Having regard to the circumstances, an early trial is beneficial for the State as well as the accused. Therefore, appropriate steps shall be initiated at the earliest by the Judicial Officers concerned, to complete the trial expeditiously, at any rate, within an outer period of six months from today.

24. It is clarified that in case of violation of any of the conditions stipulated, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law, notwithstanding the bail having been granted by this Court.

The application shall stand allowed as above.

**BECHU KURIAN THOMAS
JUDGE**

jm/

APPENDIX OF BAIL APPL. 6180/2022

PETITIONER ANNEXURES

- Annexure A-1 TRUE COPY OF THE ORDER OF THIS HON'BLE COURT DATED 23.03.2021 IN B.A. NO. 1919/2021
- Annexure A-2 TRUE COPY OF THE ORDER DATED 03.04.2021 IN CP.NO.24 OF 2021 PASSED BY THE JUDICIAL MAGISTRATE FIRST CLASS- III, NEYYATTINKARA
- Annexure A-3 TRUE COPY OF THE ORDER DATED 10.06.2022 IN CRL. R.P. NO. 13 OF 2022 PASSED BY THE SESSIONS COURT, THIRUVANANTHAPURAM
- Annexure A-4 TRUE COPY OF THE ORDER OF THIS COURT IN CRL.M.C. NO. 4067/2022 DATED 29.07.2022