

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE GOPINATH P.
TUESDAY, THE 4TH DAY OF JANUARY 2022 / 14TH POUSHA, 1943
BAIL APPL. NO. 9575 OF 2021
CRIME NO.2055/2021 OF ALUVA EAST POLICE STATION, ERNAKULAM
DISTRICT

PETITIONERS/ACCUSED:

- 1 MOHAMMED SUHAIL,
AGED 27 YEARS,
S/O. YUSUF, MALEKKUDY HOUSE, IRUMALAPPADY BHAGAM,
KUTTILANJI KARA, ERAMALLUR VILLAGE, IRAMALLUR P.O.,
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT-686 691.
- 2 RUKKIYA,
AGED 57 YEARS
W/O. YUSUF, MALEKKUDY HOUSE, IRUMALAPPADY BHAGAM,
KUTTILANJI KARA, ERAMALLUR VILLAGE, IRAMALLUR P.O.,
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT-686 691.
- 3 YUSUF,
AGED 62 YEARS
S/O.SAID MOHAMMED, MALEKKUDY HOUSE, IRUMALAPPADY
BHAGAM, KUTTILANJI KARA, ERAMALLUR VILLAGE, IRAMALLUR
P.O., KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT-686 691.

BY ADVS.
K.N.ABHILASH
SUNIL NAIR PALAKKAT
M.A.AHAMMAD SAHEER
P.B.MUHAMMED AJEESH
RITHIK S.ANAND

RESPONDENTS/STATE AND COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.
- 2 DEPUTY SUPERINTENDENT OF POLICE,
CRIME BRANCH, ERNAKULAM RURAL, ALUVA,
ERNAKULAM DISTRICT-683 101.
- 3 ADDL.R3 DILSHAD
AGED 51 YEARS
S/O.SALIM, KAKKATTIL HOUSE, KEEZHMAAD VILLAGE,
EDAYAPPURAM, ALUVA

IS SUO MOTO IMPLEADED AS ADDL.R3 AS PER ORDER DATED
20/12/2021.

BY ADVS.

R1 & R2 BY SRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR
DIRECTOR GENERAL OF PROSECUTION

R3 BY ADV.P.K.SAJEEVAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
04.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This is an application for regular bail.

2. Petitioners are the accused in Crime No.2055 of 2021 of Aluva East Police Station, Ernakulam District, alleging commission of offences under Sections 498A, 304B and 306 of the Indian Penal Code read with Section 34 of that Code. The aforesaid crime was originally registered under Section 174 of the Code of Criminal Procedure on account of the unfortunate demise of one Mofiya Parveen (hereinafter referred to as 'the deceased') due to suicide.

3. On 03.04.2021, a '*Nikah*' was solemnized between the 1st petitioner and the deceased. It is stated that going by the religious custom of the parties the wife would be taken to the husband's home only after a further ceremony known as '*Walima*'. It is stated that the 1st petitioner and the deceased got acquainted with each other over social media. It is alleged that after the *Nikah*, the deceased was subjected to all forms of mental and physical cruelty by the 1st petitioner (her husband) and petitioners 2 & 3 who are the parents of the 1st petitioner. It was alleged that she was harassed with demands for dowry/gold. There is also an allegation, which is evident from the complaint dated 28.10.2021 filed by the deceased before the Superintendent of Police, Aluva (Rural), a copy of which has been available for my perusal, that there were allegations of sexual

harassment including demand for unnatural sex at the instance of the 1st petitioner. It appears that the 1st petitioner and the aforesaid Mofiya Parveen lived together as husband and wife for about three months after the *Nikah* and thereafter, she returned to her house. It is stated that the deceased was forced to return to her house owing to harassment at the hands of the petitioners, including refusal to observe the ceremony of '*Walima*'. There appears to have been certain communications exchanged between the 1st petitioner and the deceased regarding termination of their relationship by the pronouncement of *Talak*. The Mahal committees of the 1st petitioner and the deceased appear to have intervened in the matter. There are also records that suggest that the 1st petitioner and the deceased attended a counselling session, where certain observations were made regarding the behaviour of the 1st petitioner. Following the complaint dated 28.10.2021 to the Superintendent of Police, the parties were called to the office of the Circle Inspector of Police, Aluva East Police Station on 22.11.2021. There is an allegation that the Circle Inspector of Police, Aluva East Police Station had behaved rudely and badly with the deceased. Certain issues erupted between the 1st petitioner and the deceased in the presence of the Circle Inspector of Police. The 1st petitioner is alleged to have stated that the deceased had other relationships which prompted the deceased to slap him while in the office of the Circle Inspector. It is alleged that

the then Circle Inspector of Police, Aluva East Police Station had reprimanded the deceased and feeling insulted by the same, she had left the office of the Circle Inspector of Police together with her father. After returning to her home, it appears that she locked herself in a room and by the evening of 22.11.2021 her parents found that she had committed suicide by hanging, after leaving a suicide note.

4. The learned counsel for the petitioners would submit that even if the entire allegations in the complaint dated 28.10.2021 and all the connected materials are taken into account, the petitioners cannot be accused of having committed offences under Sections 304B or 306 of the Indian Penal Code. It is submitted with reference to certain documents, which are not placed on record, that there are some indications that the aforesaid Mofiya Parveen had certain psychological issues which could have been the reason for her to commit suicide. It is also pointed out with reference to the contents of the suicide note that the allegations are mainly against the behaviour of the then Circle Inspector of Police, Aluva East Police Station. It is also pointed out that the petitioners have been in custody for 40 days and their further detention is not required as the investigation is almost completed and further custodial interrogation of the petitioners is not warranted.

5. Sri.Narayanan, the learned Additional Public Prosecutor

vehemently opposes the grant of bail. He has referred to the statements given by the parents of the deceased as well as to the statements given by some of her close friends as well as to the treatment records made at the time when the 1st petitioner was subjected to counselling. The suicide note, allegedly penned by the deceased, is shown to me to point out that the petitioners were clearly guilty of the offences alleged against them. It is submitted that this is a case where a hapless young girl was forced to commit suicide on account of continuous harassment at the hands of the petitioners. It is submitted that if the petitioners are granted bail, there is every chance that material witnesses in the case will be influenced, which will not be conducive for the successful prosecution of the petitioners.

6. The learned counsel appearing for the de-facto complainant would also vehemently oppose the grant of bail to the petitioners and would reiterate the arguments of the learned Additional Public Prosecutor. It is pointed out with the reference to the contents of the complaint dated 28.10.2021 given by the deceased to the Superintendent of Police, Aluva that the petitioners in this bail application were clearly responsible for her death. It is pointed out that the behaviour of the 1st petitioner was so abhorrent that no girl could have continued the relationship with him. It is pointed out that complaint dated 28.10.2021 clearly shows that the

1st petitioner had even subjected the deceased to unnatural sex. It is submitted that the deceased was driven to suicide clearly on account of the continuous harassment both mental and physical at the hands of the petitioners.

7. The learned counsel for the petitioners, in response to the argument of the learned counsel for the de-facto complainant, submits that even going by the contents of the complaint dated 28.10.2021, the deceased was the one who wanted to continue the relationship with the 1st petitioner and that she would not have expressed such a view if the 1st petitioner had actually behaved with her in the manner indicated in the complaint. It is pointed out that the purpose of the investigation is not going to be served in any manner by keeping the petitioners under custody any longer and that the petitioners are to be presumed innocent until proven guilty in a duly constituted trial.

8. I have considered the contentions raised. The materials referred to by the learned Additional Prosecutor and the learned counsel appearing for the de-facto complainant would suggest that the deceased had serious complaints against the conduct of the 1st petitioner (her husband). While it would not be proper to indicate, in detail, the nature of the allegations raised against the 1st petitioner, it must be stated that the allegations are serious and those allegations if proved correct would indicate that the deceased had been treated

with utmost cruelty by the 1st petitioner. Taking into account the nature of the allegations raised against the 1st petitioner, I am not inclined to grant bail to the 1st petitioner. However, in so far as petitioners 2 and 3 are concerned, I note that the allegations are principally against the 2nd petitioner and these allegations are restricted to certain instances of demand for dowry and allegations of making the deceased work like a housemaid and a vague allegation regarding the physical assault on one particular day. In so far as the 3rd petitioner is concerned, the deceased had not made any specific allegation even in the complaint dated 28.10.2021. Of course, a reading of the suicide note suggests that petitioners 2 & 3 were also responsible for certain acts and omissions which compelled the deceased to commit suicide. For reasons already indicated and especially on account of the fact that the continued detention of petitioners 2 & 3 is not necessary for the purpose of investigation, they can be directed to be released on bail upon sufficient conditions to ensure that they do not interfere with the investigation or influence any material witnesses.

9. Resultantly, this bail application in so far as it relates to the 1st petitioner will stand dismissed and it will stand allowed in so far as it relates to petitioners 2 and 3, who shall be released on bail subject to the following conditions:

(1) Petitioners 2 and 3 shall execute bonds for sums of

Rs.1,00,000/- (Rupees One Lakh) each with two solvent sureties each for the like sum to the satisfaction of the Jurisdictional Court;

(2) Petitioners 2 and 3 shall not attempt to or to influence or intimidate the de-facto complainant or any witness in Crime No.2055 of 2021 of Aluva East Police Station, Ernakulam District;

(3) Petitioners 2 and 3 shall report before the investigating officer in Crime No.2055 of 2021 of Aluva East Police Station, every Saturday at 11.00 A.M until further orders;

(4) Petitioners 2 and 3 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.

(5) Petitioners 2 and 3 shall not involve in any other crime while on bail.

If any of the aforesaid conditions are violated, the investigating officer in Crime No.2055 of 2021 of Aluva East Police Station, Ernakulam District, may apply to this Court for cancellation of bail.

Any observation in this order shall not be construed as a finding by this court on any issue. The observations are only for the purpose

of considering the entitlement or otherwise of the petitioners for bail.

Sd/-
GOPINATH P.
JUDGE

DK