

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

WEDNESDAY, THE 4TH DAY OF AUGUST 2021 / 13TH SRAVANA, 1943

BAIL APPL. NO. 4765 OF 2021

[CRIME NO.RC 3(S) OF 2019 CBI : (SCB), THIRUVANANTHAPURAM

CRIME NO.75/CBI/KNR & KSD/2019 OF CRIME BRANCH, KASARAGOD

CRIME NO.81/19 OF BEKAL POLICE STATION (BA 8319/19,

BA 5421/19 AND BA 3574/2020)

PETITIONER/ACCUSED NO.11:

PRADEEP @ KUTTAN

AGED 35 YEARS

S/O.MADHAVAN, THANNITHODU, PERIYA, KASARAGOD
DISTRICT.

BY ADVS.

M.SASINDRAN

P.K.SUBHASH

RESPONDENTS/STATE & COMPLAINANT :

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM - 682 031.
- 2 THE CENTRAL BUREAU OF INVESTIGATION
THIRUVANANTHAPURAM - 695 008 (CRIME NO.RC 3(S) OF
2019 CBI : (SCB) THIRUVANANTHAPURAM).

BY ADV SHRI.P.VIJAYAKUMAR, ASG OF INDIA

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
06.07.2021, THE COURT ON 04.08.2021 DELIVERED THE
FOLLOWING:

B.A.No.4765/2021

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"CR"

R.NARAYANA PISHARADI, J

B.A.No.4765 of 2021

Dated this the 4th day of August, 2021

ORDER

This is an application for bail filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'the Code').

2. The petitioner is Accused No.11 in the case registered as Crime No.81/2019 of the Bekal police station which was re-registered as Crime No.75/CB/KNR & KSD/2019 of the Crime Branch. The investigation of the case was subsequently entrusted to the Central Bureau of Investigation (CBI) and the case was again re-registered as Crime No.RC-3 (S)/2019/CBI(SCP).

3. The case relates to the murder of two young persons by name Kripesh and Sarath Lal, who were activists of Youth Congress, on 17.02.2019.

4. The prosecution case, in short, is as follows: The first accused was the Branch Secretary and Member of the Area Committee of the Communist Party of India (Marxist). There was personal as well as political enmity between the first accused and the deceased persons. On 05.01.2019, the deceased and some other persons had attacked the first accused and caused grievous hurt to him. The accused decided to give a befitting reply to it. On 14.02.2019, in between 15.40 and 17.40 hours, accused 1 to 9 and 11 hatched a criminal conspiracy at the bus waiting shed at the place called "Echiledukkam" in Peria Village and decided to murder Kripesh and Sarath Lal. Pursuant to such conspiracy, on 17.02.2019, as per the information obtained from the tenth accused that Kripesh and Sarath Lal were at the premises of the place Kallyot, accused 1 to 8, armed with deadly weapons like iron pipes and swords, reached the arecanut plantation on the side of the K.S.E.B Sub Station at Peria and they waited there by hiding. At about 19.36 hours, the tenth accused informed the sixth accused over mobile phone that Kripesh and Sarath Lal had

proceeded towards their house on a motor cycle. Between 19.36 and 19.45 hours, when Kripesh and Sarath Lal reached the road there, Kripesh riding a motor cycle and Sarath Lal as the pillion rider, accused 1 to 8 jumped on to the road and attacked Kripesh and Sarath Lal with iron pipes and swords and caused them fatal injuries. Kripesh succumbed to the injuries at or about the same time and Sarath Lal succumbed to the injuries on the way to the hospital. It is alleged that accused 1 to 11 have committed the offences punishable under Sections 143, 147, 148, 341, 326 and 302 read with 149 of the Indian Penal Code (IPC) and also under Sections 118 and 120B of the I.P.C.

5. The first accused was arrested on 19.2.2019. Accused No.2 surrendered on 20.2.2019 and accused Nos.3 to 7 surrendered on 21.2.2019 and upon their surrender, they were arrested. Accused No.8 was arrested on 16.5.2019. Accused No.9 was arrested on 13.03.2019 and Accused No.10 on 16.03.2019. The petitioner (A11) was arrested on 29.04.2019.

6. After completing the investigation, the Deputy Superintendent of Police, Crime Branch, Malappuram filed final report against the accused on 20.05.2019 in the Magistrate's Court concerned. Learned Magistrate committed the case to the Court of Session after complying with the necessary formalities.

7. Meanwhile, the parents of the deceased persons filed a writ petition as W.P(C) No.10265/2019 before this Court for issuing a direction to entrust the investigation of the case to the CBI. On 30.09.2019, a Single Bench of this Court allowed the aforesaid writ petition and transferred the investigation of the case to the CBI and set aside the final report filed by the Crime Branch. Pursuant to the order of this Court, the CBI took over the investigation of the case and re-registered the case as Crime No. RC-3 (S)/2019/CBI(SCP).

8. The State filed appeal as W.A.No.2216/2019 challenging the judgment of the Single Bench in the writ petition W.P(C) No.10265/2019. As per the judgment dated 25.08.2020, the Division Bench partly allowed the writ appeal. The operative

portion of the judgment of the Division Bench reads as follows:

"In the circumstances, consequent to the revival of the final report by setting aside the impugned judgment to the extent it set aside the final report laid in Crime No.75/CB/KNR&KSD/2019 of Crime Branch, Kasaragod (Crime No.81 of 2019 of Bekal Police Station) and upholding of the transfer of the investigation to CBI we direct the CBI to conduct 'further investigation' based on the re-registration of the case and file supplementary report in terms of the provisions under Section 173(8) Cr.P.C. This shall be done as expeditiously as possible, taking note of the fact that already a report under Section 173(2) Cr.P.C has been filed by SIT of Crime Branch, Kasaragod. Though we brought back life to the said report and held that cognizance has to be taken thereon we are of the view that, in view of the nature of the case, the court must wait till the receipt of the 'supplementary report' of the CBI to be submitted after 'further investigation'. Upon receipt of the supplementary report the trial court has to consider both the reports, idest, the report filed by the SIT of Crime Branch, Kasaragod under Section 173(2) Cr.P.C and the 'supplementary report' of the CBI filed under Section 173(2) Cr.P.C and shall

proceed with the case further in accordance with law. The impugned judgment passed in W.P.(C) No.10265 of 2019 stands modified to the above extent. The appeal is partly allowed as above”.

9. The State filed appeal (Civil Appeal No.3892/2020 @ SLP(C) No.10963/2020) before the Supreme Court challenging the judgment of the Division Bench of this Court. As per order dated 01.12.2020, the Supreme Court dismissed the appeal and directed the concerned police authorities of the State to provide the relevant material to the CBI at the earliest. Thereafter, the case is being investigated by the CBI.

10. Heard Sri.M.Sasindran, learned counsel for the petitioner and Sri.P.Vijayakumar, learned Assistant Solicitor General who appeared for the CBI.

11. The petitioner, along with other accused, had earlier filed application for regular bail as B.A.No.3291/2019. It was dismissed as withdrawn by a learned Judge of this Court by order dated 13.06.2019. The second application for regular bail filed by the petitioner as B.A.No.5421/2019 was dismissed on merits by

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the same learned Judge 07.08.2019. The third application for regular bail filed by the petitioner as B.A.No.3674 of 2020 was dismissed on merits by me on 25.08.2020. The petitioner filed this fourth application for regular bail on 09.06.2021.

12. Learned counsel for the petitioner has submitted that the petitioner has been in jail for the last more than two years but it is not known when the investigation of the case by the CBI would be completed and supplementary final report would be filed. Learned counsel submitted that, during the investigation conducted by the CBI, the petitioner was interrogated. Learned counsel submitted that the CBI could not unearth any fresh evidence against the petitioner. Learned counsel also repeated the contention raised in the earlier bail applications that there is no reliable material to show the involvement of the petitioner in the criminal conspiracy alleged to have taken place to commit murder. He would also submit that the petitioner is not a person capable of exerting any political or other influence and the prosecution cannot have any apprehension that he would tamper

with the evidence in the case.

13. *Per contra*, learned Assistant Solicitor General has contended that there is no change of circumstance since the date of dismissal of the earlier application for bail filed by the petitioner and therefore, the present application is not maintainable. He has submitted that, during the investigation conducted by the CBI, fresh evidence could be collected against the petitioner. He has also submitted that the petitioner is a person having political connections and if the petitioner is released on bail, there is every chance that he would intimidate and influence the witnesses. It is also contended that the mere fact that the petitioner has been under detention for a long period is not a sufficient ground to grant him bail.

14. The law relating to successive bail applications is well-settled. An accused has right to make successive applications for grant of bail. But, the Court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases,

the Court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications (See **Kalyan Chandra Sarkar v. Rajesh Ranjan : AIR 2004 SC 1866**). A bail application in a case where earlier applications have been rejected is maintainable only when there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete (See **Kalyan Chandra Sarkar v. Pappu Yadav : AIR 2005 SC 921**).

15. Once an application for bail is rejected by a speaking order, the change in circumstance pleaded to maintain a subsequent application shall not be specious but real and genuine (See **G.R. Ananda Babu v. State of Tamil Nadu : 2021 SCC OnLine SC 176**).

16. Since the dismissal of the last application for bail filed by the petitioner, the CBI has actually commenced the investigation in the case. This is the only change in circumstance with regard to the fact situation of the case. But, such change is

not in favour of the petitioner but against him.

17. It is true that the CBI had taken over the investigation of the case and re-registered the case pursuant to the judgment of the Single Bench of this Court. But, the CBI could actually commence the investigation in the case only after the writ appeal by the State was dismissed by the Supreme Court. This fact is evident from the direction given by the Supreme Court to the State Police to provide the records of the case to the CBI at the earliest.

18. Since the date of dismissal of the last application for bail filed by the petitioner, he has now undergone incarceration for nearly one more year. Long period of detention in jail, by itself, is not a sufficient ground to grant bail in a case in which the accusation is of committing double murder.

19. In **Kalyan Chandra Sarkar v. Rajesh Ranjan : AIR 2004 SC 1866**, the Supreme Court has held as follows:

"In the impugned order it is noticed that the High Court has given the period of incarceration already

undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail. For the reasons stated above, we are of the considered opinion that the High Court was not justified in granting bail to the first respondent on the ground that he has been in custody for a period of three and a half years or that there is no likelihood of the trial being concluded in the near future, without taking into consideration the other factors".

(emphasis supplied)

20. In **Rajesh Ranjan Yadav v. C.B.I : AIR 2007 SC 451**, the Apex Court has held as follows:

"While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the Court has also to take into consideration other facts and circumstances, such as the interest of the society."

21. In **Anil Kumar Yadav v. State : AIR 2017 SC 5398**, it has been held as follows:

"As pointed out earlier, one of the grounds for grant of bail to the appellant Anil Kumar Yadav by the Sessions Court was that he was in custody for more than one year. In crimes like murder, the mere fact that the accused was in custody for more than one year, may not be a relevant consideration."

22. In the instant case, two young persons, who were aged 21 years and 24 years, were done to death by their political opponents. The impact of such a crime on the society cannot be ignored. As held by the Apex Court in **Ash Mohammad v. Shiv**

Raj Singh : (2012) 9 SCC 446, though deprivation of liberty of a person has immense impact on his mind and incarceration creates a concavity in the personality of an individual and the sacrosanctity of liberty is paramount in a civilized society, in a democratic body polity which is wedded to Rule of Law, individual liberty is restricted by larger social interest. In an organized society, the concept of liberty basically requires citizens to be responsible and not to disturb the tranquility and safety which every well-meaning person desires. The same thought was echoed by the Apex Court in **Neeru Yadav v. State of U.P (AIR 2015 SC 3703)**.

23. Even the spread of the pandemic COVID-19 cannot be projected as a sufficient ground to release an accused on bail in a case of grave crime like murder. In **State of Kerala v. Mahesh : 2021 SCC OnLine SC 308**, the Apex Court has held as follows:

"37. There can be no doubt that the outbreak of the novel COVID-19 pandemic and its spread has been

a matter of serious public concern. The virus being highly infectious, precautions to prevent spread of infection to the extent possible are imperative. In Suo Motu Writ Petition (Civil) No.1 of 2020 In Re : Contagion of Covid 19 Virus In Prisons, this Court expressed concern over the possibility of spread of COVID-19 amongst prisoners lodged in overcrowded correctional homes and accordingly issued directions from time to time, directing the authorities concerned to inter alia take steps as directed by this Court, to minimize the risk of spread of COVID amongst the inmates of correctional homes. This Court also directed that a High Powered Committee be constituted by the States and Union Territories to consider release of some prisoners on interim bail or parole during the Pandemic, to prevent overcrowding of prisons.

38. It appears that the High Court has completely mis-appreciated the object, scope and ambit of the directions issued by this Court from time to time in In Re : Contagion of Covid 19 Virus In Prisons. This Court did not direct release of all under-trial prisoners, irrespective of the severity of the offence. After hearing the learned Attorney General of India, Mr. Venugopal, the Amicus Curiae appointed by this Court, Mr.Dushyant Dave and other Learned

Counsel, the States and Union Territories were directed to constitute a High Powered Committee to determine which class of prisoners could be released on parole or interim bail for such period as might be thought appropriate. By way of example, this Court directed the States/Union Territories to consider release of prisoners convicted of minor offences with prescribed punishment of seven years or less. The orders of this Court are not to be construed as any direction, or even observation, requiring release of under-trial prisoners charged with murder, and that too, even before investigation is completed and the chargesheet is filed. The Respondent Accused, it is reiterated, is charged with murder in the presence of an eye witness, and the impugned order granting bail was filed even before the chargesheet was filed".

(emphasis supplied)

24. This Court is not oblivious of the recent decision of the Supreme Court in **Union of India v. K.A.Najeeb : (2021) 3 SCC 713** wherein the Apex Court refused to interfere with the order of the High Court granting bail to an accused involved in a case under the Unlawful Activities (Prevention) Act, 1967.

However, it was not a case of murder. Further, the accused in that case was in jail for more than five years. The maximum sentence awarded to the co-accused who were convicted by the trial court was eight years rigorous imprisonment. Investigation was over in that case and there was no chance of completing the trial of the case in the near future. The facts of the present case can have no comparison with the facts of the case in **Najeeb** (supra).

25. The contention raised by the petitioner that he has no role or connection with the conspiracy alleged in the case does not merit consideration now. This question had been considered by this Court elaborately in the order dismissing the last application for bail filed by the petitioner.

26. The petitioner has raised a plea that he is not an influential person and that the prosecution can have no apprehension that he would intimidate or influence the witnesses. This plea was also considered by this Court in the order passed in

dismissing the last application for bail filed by the petitioner and the reasons stated by this Court in negating that plea need no reiteration here.

27. Having considered the above aspects, in the absence of any change in fact situation or law with regard to the case on hand, I find that the petitioner is not entitled to be released on bail at this stage. The bail application is liable to be dismissed.

28. At the same time, this Court is not inclined to find that the petitioner shall be detained in jail indefinitely. The right to speedy trial is applicable not only to the actual proceedings in the Court but also includes within its sweep the preceding police investigation as well (See **Vakil Prasad Singh v. State of Bihar : AIR 2009 SC 1822**). Inordinate delay in investigation may be taken as presumptive proof of prejudice particularly when accused is in custody. Prosecution cannot be allowed to become persecution. Speedy investigation is recognized as a part of fundamental right of fair procedure under Article 21 of the Constitution of India. There is implicit right under Article 21 of

the Constitution for speedy trial which in turn encompasses speedy investigation, inquiry, appeal, revision and retrial (See **Dilawar v. State of Haryana : AIR 2018 SC 2269**).

29. In **Dilawar** (supra), considering the fact that the accused was in custody, the Apex Court had given direction to the CBI to complete the investigation within a specific period.

30. Taking note of the fact that already a report under Section 173(2) of the Code had been filed, the Division Bench of this Court, in the judgment in W.A.No.2216/2019, had directed the CBI to complete the further investigation in the case as expeditiously as possible. When this bail application was heard on 06.07.2021, this Court had enquired with the learned Assistant Solicitor General, how much more time would be required by the CBI to complete the further investigation in the case. Learned Assistant Solicitor General then submitted that CBI would require six months more to complete the investigation of the case. Since then nearly one month is now over. In these circumstances, having regard to the fact that the petitioner and most of the

other accused in the case are in custody for more than two years, I find that it is proper to direct the CBI to complete the investigation in the case within a period of four months from today.

31. Consequently, the bail application is dismissed. The CBI is directed to complete the further investigation in the case within a period of four months from today. The petitioner is at liberty to file fresh application for bail in the competent trial court/jurisdictional court after a period of four months from today.

(sd/-) **R.NARAYANA PISHARADI, JUDGE**

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APPENDIX IN B.A.NO.4765 OF 2021

PETITIONER'S ANNEXURES:

ANNEXURE A1 : A TRUE COPY OF THE ORDER DATED 31.10.2019 IN CRL.M.P.NO.3313 OF 2019 OF THE SESSIONS COURT, KASARAGOD.

ANNEXURE AII : A TRUE COPY OF THE ORDER DATED 11.07.2019 IN CRL.M.P.NO.2230 OF 2019 (IN CRIME NO.81 OF 2019 OF BEKAL POLICE STATION) OF THE SESSIONS COURT, KASARAGOD.

ANNEXURE AIII : A TRUE COPY OF THE ORDER DATED 7.8.2019 IN B.A.NO.5421 OF 2019.

ANNEXURE AIV : A TRUE COPY OF THE ORDER DATED 8.1.2020 IN BAIL APPLICATION NO.8318 OF 2019.

ANNEXURE AV : A TRUE COPY OF THE ORDER DATED 25.8.2020 IN B.A.NO.3674 OF 2020.

ANNEXURE AVI : A TRUE COPY OF THE ORDER DATED 8.6.2021 IN C.M.P.NO.1052 OF 2021 OF THE COURT OF CHIEF JUDICIAL MAGISTRATE, ERNAKULAM.

RESPONDENTS' ANNEXURES :

NIL

TRUE COPY

PS TO JUDGE