

Sobi @ Devasya, vs State of Kerala,

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Court : Kerala

Decided On : Apr-25-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./2456/2024

Appellant : Sobi @ Devasya,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY, THE 25TH DAY OF APRIL 2024 / 5TH VAISAKHA, 1946 CRIME NO.2/2024 OF Sholayur Forest Station Office, Palakkad AGAINST THE ORDER/JUDGMENT DATED 15.03.2024 IN CMP NO.69 OF 2024 OF MUNSIFF MAGISTRATE COURT, ATTAPADI PETITIONER/S: 1 SOBI @ DEVASYA, AGED 42 YEARS S/O PHILIPPOSE, RESIDING AT KAIPPANPLAKKAL, CHITTUR, AGALI, PALAKKAD DISTRICT, PIN - 678581 2 SIJO GEORGE, AGED 42 YEARS S/O C.V.GEORGE, RESIDING AT AGALI, PALAKKAD, PIN - BY ADVS. T.C.SURESH MENON B.DEEPAK NIKITHA K.V. RESPONDENT/S: 1 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM, PIN - 682031 2 DEPUTY RANGE

FOREST OFFICER, SHOLAYUR FOREST STATION, PALAKKAD, PIN -
678581

OTHER PRESENT: SR PP SMT NEEMA T V THIS BAIL APPLICATION HAVING
COME UP FOR ADMISSION ON 25.04.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: Dated this the 25th day of April, 2024

ORDER

The application is filed under Section 439 of the Code

of Criminal Procedure, 1973, by the accused 2 and 6 in OR.No.2/2024 of the
Sholayur Forest Range Office, Palakkad, registered against the accused, for
allegedly committing the offences under Sections 27(i)(e), (iv)(iii) & 47C, 47F, 47G,
47H, 61A of the Kerala Forest Act, 1961 and Section 2(16), 9, 29, 31, 39, 50, 51 of
the Wild Life (Protection) Act of 1972. The petitioners were arrested on
06.03.2024.

2. The crux of the prosecution case is that: the

accused, in furtherance of their common intention, had trespassed into the
Government forest area in Vetikund- Chavadiyur Malavaram in VFC item 118 and
killed 2 deers and were found in possession of sandal wood. Thus, the accused
have committed the above offences.

3. Heard; Sri. T.C.Suresh Menon, learned counsel appearing for the petitioners
and Smt.Neema T.V., the learned Senior Public Prosecutor.

4. The learned counsel appearing for the

petitioners submitted that the petitioners are totally innocent of the accusations
levelled against them. They have been falsely implicated in the crime. There is no
material to substantiate the involvement of the petitioners in the case. The
petitioners are the sole bread winners of their family. In any given case, the
petitioners have been in judicial custody for the last 50 days, the investigation in
the case is complete and recovery has been effected. Therefore, the petitioners

may be enlarged on bail.

5. The learned Public Prosecutor opposed the

application. She submitted that the investigation is in progress. If the petitioners are released on bail, there is every likelihood of them committing similar offences. Hence, the application may be dismissed.

6. On an evaluation of the prosecution allegation, it

can be gathered that, the petitioners along with the other accused had allegedly trespassed into the forest area and killed two deers and were found in possession of sandal wood. The fact remains that the petitioners have been in judicial custody for the last 50 days, the investigation in the case is complete and recovery has been effected.

7. In *Sanjay Chandra v. CBI*, [2012 1 SCC 40], the

Honourable Supreme Court has categorically held that the fundamental postulate of criminal jurisprudence is the presumption of innocence, until a person is found guilty. Any imprisonment prior to conviction is to be considered as punitive and it would be improper on the part of the Court to refuse bail solely on the ground of former conduct.

8. In *Dataram Singh v. State of U.P.*, [(2018) 3 SCC

22] the Honourable Supreme Court observed that grant of bail is the rule and putting a person in jail is an exception. Even though the grant of bail is entirely the discretion of the court, it has to be evaluated based on the facts and circumstances of each case and the discretion has to be exercised in a judicious and compassionate manner.

9. In *State of Kerala v. Raneef*, [(2011) 1 SCC 784],

the Honourable Supreme Court has declared that undertrial prisoners detained in jail for indefinite periods, without any sufficient reason or due to the delay in concluding the trial, will tantamount to infringement of their right to life guaranteed

under Article 21 of the Constitution.

10. In *Hussainara Khatoon (I) v. Home Secy.*,

State of Bihar [(1980) 1 SCC 81], the Honourable Supreme Court while dealing with a case of under trials, who suffered long incarceration, held that the procedure that keeps large number of people behind the bars without trial for long is unreasonable and unfair and is not in conformity with the mandate of Article 21 of the Constitution of India.

11. After bestowing my anxious consideration to the

facts, the rival submissions made across the Bar and the materials placed on record, and on comprehending the fact that the petitioners have been in judicial custody for the last 50 days, the investigation in the case is practically complete and recovery has been effected, I am of the definite view that the petitioners' further detention is unnecessary. Hence, I am inclined to allow the application. In the result, the application is allowed, by directing the petitioners to be released on bail on them executing a bond for Rs.50,000/- (Fifty Thousand only) with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

(i) The petitioners shall appear before the

Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is filed. They shall also appear before the Investigating Officer as and when directed;

(ii) The petitioners shall not directly or indirectly

make any inducement, threat or procure to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;

(iii) The petitioners shall not commit any offence while they are on bail;

(iv) The petitioners shall surrender their passport,

if any, before the court below at the time of execution of the bond. If they have no passport, they shall file an affidavit to the effect before the court below on the date of execution of the bond;

(v) In case of violation of any of the conditions

mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

(vi) Applications for deletion/modification of the bail conditions shall be moved and entertained by the court below.

(vii) Needless to mention, it would be well within

the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioners even while the petitioners are on bail as laid down by the Hon'ble Supreme Court in *Sushila Aggarwal v. State (NCT of Delhi)* and another [2020

(1) KHC 663]. sd/- C.S.DIAS, JUDGE rkc/25.04.24 APPENDIX OF BAIL APPL. 2456/2024 PETITIONER ANNEXURES Annexure-A TRUE COPY OF THE ORDER IN C.M.P. NO.69/ 2024 ON THE FILE OF THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS, ATTAPPADY, DATED 15.3.2024.

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