

Satheesan 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./3225/2024

Appellant : Satheesan

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 BAIL APPL.
NO. 3225 OF 2024 CRIME NO.242/2024 OF Hill Palace Police Station,
Ernakulam PETITIONER/S:

1 SATHEESAN,AGED 63 YEARS,S/O. SANKARAN NAIR,
KALLAMPARAMBIL HOUSE, KAROTH ROAD, PUTHIYAKAVU,
TRIPUNITHURA, ERNAKULAM DISTRICT, PIN - 682031 2
SASIKUMAR,AGED 56 YEARS,S/O. SIVARAMA MENON, VETTUVELIL
HOUSE, THEKKUMBHAGUM, TRIPUNITHURA, ERNAKULAM
DISTRICT, PIN - 682031 3 RENJITH,AGED 32 YEARS,S/O.

APPUKUTTA MENON, P.K. NIVAS, THEKKUMBHAGUM, TRIPUNITHURA, ERNAKULAM DISTRICT, PIN - 682031 BY ADVS. NIKITA J. MENDEZ P.M.RAFIQ M.REVIKRISHNAN AJEESH K.SASI SRUTHY N. BHAT RAHUL SUNIL SRUTHY K.K SOHAIL AHAMMED HARRIS P.P. NANDITHA S.

RESPONDENT/S: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 SRI.C.S HRITHWIK, SR PP THIS BAIL APPLICATION HAVING FINALLY HEARD ON 23.04.2024 ALONG WITH BA NOS.3281 AND 3353 OF 2024, THE COURT ON 25.4.2024 PASSED THE FOLLOWING:

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 BAIL APPL. NO. 3281 OF 2024 CRIME NO.242/2024 OF Hill Palace Police Station, Ernakulam PETITIONER/S: KRISHNANKUTTY NAIR AGED 75 YEARS S/O. KRISHNAN NAIR RAVATHY HOUSE PUTHYAKAVYU DESAM THRIIPUNITHRA P.O NADAMATHEKUMBAGAM VILLAGE ERNAKULAM, PIN - 686580 BY ADVS. S.RAJEEV V.VINAY M.S.ANEER PRERITH PHILIP JOSEPH ANILKUMAR C.R. K.S.KIRAN KRISHNAN NOURIN S. FATHIMA RESPONDENT/S: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 SRI.C.S HRITHWIK, SR.PP THIS BAIL APPLICATION HAVING FINALLY HEARD ON 23.04.2024 ALONG WITH BA NOS.3225 AND 3353 OF 2024, THE COURT ON 25.4.2024 PASSED THE FOLLOWING:

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 BAIL APPL. NO. 3353 OF 2024 CRIME NO.242/2024 OF Hill Palace Police Station,

Ernakulam PETITIONER/S:

1 ANILKUMAR AGED 64 YEARS S/O AMBUJAKSHA MENON,
PUTHENPURAYIL HOUSE, UDAYAMPEROOR KARA,
MANAKKUNNAM VILLAGE, ERNAKULAM DISTRICT - 682 307 2
SANTHOSH AGED 49 YEARS S/O NARAYANAN, CHALIYATH
HOUSE, NADAMA THEKKUMBHAGOM VILLAGE, KANAYANNUR
TALUK, ERNAKULAM DISTRICT BY ADVS. R.ANIL SUJESH MENON
V.B. THOMAS SABU VADAKEKUT MAHESH BHANU S. JOEL
GEORGE KAMPIYIL ANANTH KRISHNA K.S. RESSIL LONAN
IEANS.C.CHAMAKKALA

RESPONDENT/S: STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,
PIN- 682 031 SRI.C.S HRITHWIK, SR PP THIS BAIL APPLICATION
HAVING FINALLY HEARD ON 23.04.2024 ALONG WITH BA NOS.3281
AND 3225 OF 2024, THE COURT ON 25.4.2024 PASSED THE
FOLLOWING: C.S.DIAS,J =====

----- Dated this the 25th day of April, 2024

COMMON ORDER

The accused 5, 6, 9, 10, 11 and 14 in Crime No.242/2024

of the Hill Palace Police Station, Ernakulam, have filed these applications for the second time, under Section 439 of the Code of Criminal Procedure, 1973, to enlarge them on bail. BA No.3225/2024 is filed by the accused 5, 6 and 14, BA No.3281/2024 is filed by the 11th accused and BA No.3353/2024 is filed by the accused 9 and 10 in the above

crime. The accused 5 and 6 had surrendered before the Investigating Officer on 12.2.2024, the accused 9, 10 and 11 were arrested on 15.2.2024 and the 14th accused had surrendered on 20.2.2024. As the applications pertain to the same crime, they are consolidated, jointly heard and are being disposed of by this common order.

2. The gravamen of the prosecution allegation is that:

On 12.2.2024, the accused Nos.7, 8, 29 to 31 led by the 1st accused (the contractor), on instructions from the accused Nos. 2 to 6 and 9 to 28 - the members of Vadakkumpuram Thalappoli Festival Committee, the Office bearers of Vadakkumpuram Karayogam and the Office bearers of the Temple Devaswom-brought raw materials and explosive substances in a 17 seater tempo traveller van bearing No.KL- 07-CB-7133, without any licence or permission from Pothencode, Thiruvananthapuram, being aware that it could

cause harm to life and property and even death. The explosives were unloaded and unlawfully stored in a shed built on 70 cents of land belonging to Vadakkumpuram Nair Karayogam, situated on the southern margin of the YMA Road. Due to the careless handling of the explosives, an

explosion took place resulting in the death of Vishnu and Anil, causing grievous injuries to 12 persons, extensive damage to 15 nearby houses, leaving them unfit to dwell, and damage to 300 houses and vehicles parked in the locality. The accused Nos. 1 to 34, including the accused Nos.32 to 34, who harboured the accused persons 9 to 11, have committed the offences punishable under Sections 286, 304, 308, 337, 427, 212 read with 34 IPC, Section 3(a) of Explosive Substances Act 1908 and Section 9(B) (1) (b) of Explosive Act.

3. Heard; Sri. B Raman Pillai and Sri.P.Vijayabhanu,

learned Senior Counsel appearing for the petitioners in BA Nos.3353 and 3225 of 2024, respectively, Sri.S.Rajeev, the learned Counsel appearing for the petitioners in BA No.3281/2024 and Sri. C.S Hrithwik, the learned Senior Public Prosecutor.

4. Sri.B.Raman Pillai strenuously argued that the

accused 9 and 10 have no complicity in the crime, which is clearly evident from Annexures A3 and A3(a) remand reports. They are only the office bearers of the Temple Devaswom. The explosives were procured and stored by the Vadakkumpuram Karayogam in their property. The explosion took place on the fifth day of the seven days festival, which was also conducted by the

Vadakkumpuram Karayogam. The Temple Devaswom had not conducted any fire display on the festival days. The Temple Devaswom have no role in procuring, transporting or storing the explosives. In any given case, the offences under Secs.304 and 308 of the Indian Penal Code or Sec.4 of the Explosives Substances Act cannot be attributed against the petitioners. The petitioners are respectable persons of the locality and have no criminal antecedents. They are suffering from various age related ailments. The petitioners have been in judicial custody for the last 71 days. The investigation in the case is complete and recoveries have been effected. Therefore, the petitioners may be enlarged on bail.

5. Sri.P Vijayabhanu adopted the contentions of Sri.B Raman Pillai. He further submitted that the petitioners in BA No.3225/2024 were only the volunteers of the temple festival and were glorified badge holders. They have no complicity in the crime. It was only due to the laches on the part of the

contractor, who transported the explosives from Thiruvananthapuram without any licence, that the explosion happened. The petitioners cannot be attributed with any of the offences charged against them. The petitioners have been languishing in the jail for the last 71 days. There is no useful purpose in their further detention, especially since the investigation is complete and recoveries have been effected. It is only due to some technical reason the final report has not been laid. The petitioners are the sole breadwinners of

their families. They are willing to abide by any stringent condition that may be imposed by this Court. The above submissions were also adopted by Sri.S Rajeev, the learned counsel appearing for the 11th accused.

6. The learned Public Prosecutors opposed the

applications. They submitted that although the investigation is practically complete, the final report has not been laid. If the petitioners are enlarged on bail, there is a likelihood of them interfering with the investigation and tampering with the evidence. Hence, the applications may be dismissed.

7. By common order dated 2.4.2024 in BA Nos.2285

and 2498 of 2024, this Court had dismissed the earlier applications filed by the petitioners on the prima facie finding that the Temple Devaswom, Karayogams and Committees had an integral part in conducting the firework display in connection with the temple festival and the investigation was only at its preliminary stage. Moreover, as two lives were lost

and substantial damages were caused to 321 dwellings, scientific evidence also had to be collected. This Court also directed the Kerala State Legal Services Authority (KELSA) to explore the possibility of organizing an Adalath and making an endeavour to redress the grievances of the persons affected by the explosion.

8. It has now been brought to the notice of this Court

that, the KELSA has already conducted an Adalath and all the affected parties have submitted their grievances. KELSA is also putting in every effort to redress the grievances of the affected parties.

9. It is also not disputed by the prosecution that the investigation is complete and recoveries have been effected. All that now remains to be done is the filing of the final report.

10. 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.

11. 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.

12. 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.

13. 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.

14. The principle that bail is the rule and jail is an

exception is on the touch stone of Article 21 of the Constitution of India. Once the charge sheet is filed, a strong case has to be made out for continuing a person in judicial custody. The right to bail cannot be denied merely due to the sentiments of the society.

15. After bestowing my anxious consideration to the

facts, the rival submissions made across the Bar, and the materials placed on record, particularly on comprehending the fact that the petitioners have been in judicial custody for the last 71 days, the investigation in the case is complete and recoveries have been effected, I am of the firm view that the petitioners further detention is unnecessary. Hence, I am inclined to allow the bail applications, but subject to stringent conditions. In the result, the applications are allowed, by directing the petitioners to be released on bail on them 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, 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 laid. They shall also appear before the Investigating Officer as and when directed by the Investigating Officer;

(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 passports, if

any, before the court below at the time of execution of the bond. If they have no passports, they shall file affidavits 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].

(xi) Any observations made in this order is only for the purpose of deciding the applications and the same shall not be construed as an expression on the merits of the cases, which is to be decided by the competent Court(s). SD/-
Sks/25.4.2024 C.S.DIAS, JUDGE