

Anoop vs State of Kerala

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Court : Kerala

Decided On : Apr-23-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./3303/2024

Appellant : ANOOP

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS TUESDAY, THE 23RD DAY OF APRIL 2024 / 3RD VAISAKHA, 1946 BAIL APPL. NO. 3303 OF 2024 CRIME NO.617/2024 OF CHAVARA SOUTH POLICE STATION, KOLLAM AGAINST THE ORDER/JUDGMENT DATED 08.04.2024 IN CRMC NO.617 OF 2024 OF DISTRICT COURT & SESSIONS COURT,KOLLAM PETITIONER/ACCUSED: ANOOP AGED 29 YEARS, S/O THOMAS, RESIDINGV@ ANUVILLA, EDAMALA MURI, MULAVANA, KOLLAM, PIN - 691 503. BY ADV R.KISHORE (KALLUMTHAZHAM) RESPONDENTS/STATE: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682 031. 2 STATION HOUSE OFFICER CHAVARA THEKKUM BHAGOM POLICE STATION, CHAVARA KOLLAM, PIN -

OTHER PRESENT: SR PP SRI C S HRITHWIK THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Dated this the 23rd day of April, 2024

ORDER

The application is filed under Section 439 of the

Code of Criminal Procedure, 1973, by the first accused in Crime No.225/2024 of the Chavara Thekkumbhagam Police Station, Kollam, registered against the accused for allegedly committing the offences under Sections 294(b), 323, 324, 326, 333 and 506 (ii) r/w Section 34 of the Indian Penal Code. The petitioner was arrested on 11.03.2024.

2. The gravamen of the prosecution allegation is

that; a person named Sajeev Antony had lodged a complaint with the Thekkumbhagam Police Station, alleging that the first accused was in a relationship with his wife and was attempting to abduct her. Consequent to the complaint, the police party reached the house of Sajeev Antony. Then, the first accused on seeing the police party hurled abuses at them and hit the de facto complainant on his face with a key and he suffered a fracture to his tooth. The accused 2 and 3 also manhandled the de facto complainant. The accused, in furtherance of their common intention, deterred the police from discharging their official duty. Thus, the accused have committed the above offences.

3. Heard; Sri. R.Kishore, learned counsel appearing for the petitioner and Sri.C.S. Hrithwik. the learned Senior Public Prosecutor.

4. The learned counsel appearing for the petitioner submitted that the petitioner is totally

innocent of the accusations levelled against him. The police has deliberately incorporated Sections 326 and 333 of IPC, to deny bail to the petitioner. A reading of Annexure -A1 FIR would substantiate that the above offences will not be attracted. In any given case, the petitioner has been in judicial custody for the last 40 days, the investigation in the case is practically complete and recovery has been effected. Therefore, the petitioner may be released on bail.

5. The learned Public Prosecutor opposed the application. He submitted that investigation is in progress. He also stated that if the petitioner is released on bail, there is a likelihood of him sabotaging the investigation and intimidating the witnesses. Hence, the application may be dismissed.

6. The prosecution allegation against the petitioner is that, he hit the de facto complainant on his face, which resulted in a fracture of his tooth. It is also alleged that he along with the accused 2 and 3 deterred

the police from discharging their official duty. The fact remains that the petitioner has been in judicial custody for the last 40 days, the investigation in the case is practically 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 period constitute an 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. 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.

12. On an anxious consideration of the facts, the rival submissions made across the Bar, and the

materials placed on record, especially on considering the fact that the petitioner has been in judicial custody for the last 40 days, the investigation in the case is practically complete, recovery has been effected and that the petitioner does not have any criminal antecedents, I am of the definite view that the petitioners further detention is unnecessary. Hence, I am inclined to allow the bail application, but subject to stringent conditions. In the result, the application is allowed, by directing the petitioner to be released on bail on him 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 court having jurisdiction, which shall be subject to the following conditions:

(i) The petitioner shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is laid. He shall also appear before the Investigating Officer as and when required;

(ii) The petitioner 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 him from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;

(iii) The petitioner shall not commit any offence while he is on bail;

(iv) The petitioner shall surrender his passport, if

any, before the court below at the time of execution of the bond. If he has no passport, he 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 petitioner even while the petitioner is 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 rmm/23/4/2024