

Divin vs State of Kerala

Divin vs State of Kerala

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Court : Kerala

Decided On : Jul-24-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./5153/2024

Appellant : DIVIN

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946 BAIL APPL. NO. 4671 OF 2024 CRIME NO.481/2024 OF IRINJALAKUDA POLICE STATION, THRISSUR PETITIONER/ACCUSED: SARAN, AGED 35 YEARS SON OF SASI, KARATHOOPARAMBIL HOUSE, MOORKKANAD DESOM, PORATHISSERY VILLAGE, MUKUNDAPURAM TALUK, THRISSUR DISTRICT., PIN - 680125 BY ADV NIREESH MATHEW RESPONDENT: STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA. ERNAKULAM, KOCHI., PIN - 682031 OTHER PRESENT: ADDITIONAL DIRECTOR GENERAL OF PROSECUTION(AG-11) SRI

GRASHIOUS KURIAKOSE STATE PUBLIC PROSECUTOR(AG-28) SRI C K SURESH, THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24.07.2024, ALONG WITH Bail Appl..4686/2024, 4816/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946 BAIL APPL. NO. 4686 OF 2024 CRIME NO.481/2024 OF IRINJALAKUDA POLICE STATION, THRISSUR PETITIONER/ACCUSED: RISWAN, AGED 20 YEARS S/O ABDUL RAZAK, VAIPPINKATTIL HOUSE, CHERIYAPALAM DESOM, URAKAM VILLAGE, THRISSUR TALUK, THRISSUR., PIN - 680711 BY ADVS. ASHIK K.MOHAMED ALI MUHAMMED RIFA P.M. EHLAS HALEEMA C.K. GAYATHRI ASHISH NAIR SALMAN FARIS RESPONDENT: STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 BY ADVS. ADDITIONAL DIRECTOR GENERAL OF PROSECUTION(AG- 11)SRI GRASHIOUS KURIAKOSE STATE PUBLIC PROSECUTOR(AG-28) SRI C K SURESH, THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24.07.2024, ALONG WITH Bail Appl..4671/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946 BAIL APPL. NO. 4816 OF 2024 CRIME NO.481/2024 OF IRINJALAKUDA POLICE STATION, THRISSUR PETITIONER/ACCUSED: MANU, AGED 20 YEARS S/O SUDHEERKUMAR, THACHILEDATH HOUSE, MOORKKANAD ILLIKKADAM DESOM, PORATHISSERY VILLAGE, MUKUNDAPURAM TALUK, THRISSUR., PIN - 679338 BY ADVS.

ASHIK K.MOHAMED ALI MUHAMMED RIFA P.M. EHLAS HALEEMA C.K. SALMAN FARIS GAYATHRI ASHISH NAIR RESPONDENT: STATE OF KERALA, REPRESENTED BY THE INSPECTOR OF POLICE, IRINJALAKUDA POLICE STATION, THRISSUR-680125, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM., PIN - 682031 BY ADVS. ADDL.DIRECTOR GENERAL OF PROSECUTION(AG-11)SRI GRASHIOUS KURIAKOSE STATE PUBLIC PROSECUTOR(AG-28) SRI C K SURESH, THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24.07.2024, ALONG WITH Bail Appl..4671/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946 BAIL APPL. NO. 5153 OF 2024 CRIME NO.481/2024 OF IRINJALAKUDA POLICE STATION, THRISSUR AGAINST THE ORDER/JUDGMENT DATED IN CMP NO.4082 OF 2024 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,IRINJALAKUDA PETITIONER/ACCUSED: 1 DIVIN AGED 23 YEARS PATTATTY (H), CHEMMANDA DESOM,PURAPPULLY PADAM, PORATHUSSERY, THRISSUR DIST, PIN - 680125 2 ABHISHEK @ APPU AGED 18 YEARS THERATTIL (H), CHEMMANDA DESOM,PURAPPULLY PADAM, PORATHUSSERY, THRISSUR DIST., PIN - 680125 BY ADVS. M.J.SANTHOSH ANTONY PAUL RESPONDENT: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 BY ADVS. ADDL.DIRECTOR GENERAL OF PROSECUTION(AG-11) SRI GRASHIOUS KURIAKOSE STATE PUBLIC PROSECUTOR(AG-28) SRI C K SURESH, THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24.07.2024, ALONG WITH BAIL APPL..4671/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Dated this the 24th day of July, 2024

COMMON ORDER

The applications are filed under Section 439 of the Code of Criminal Procedure, 1973, by the accused 5,

13,17,18 and 19 in Crime No.481/2024 of the Irinjalakuda Police Station, Thrissur, which is registered against 21 accused persons for allegedly committing the offences punishable under Sections 143, 147, 148, 506(ii), 341, 323, 324, 307 and 302 r/w Section 149 of the Indian Penal Code. The accused 5, 13 and 17 were arrested and remanded to judicial custody on 05.04.2024 and the accused 18 and 19 were arrested and remanded to judicial custody on 17.05.2024. B.A No.4671 of 2024 is filed by the 5th accused, B.A No.4816/2024 is filed by the 13th accused, B.A. No.4686/2024 is filed by the 17 th accused and B.A No.5153/2024 is filed by the accused 18 and 19. As the applications arise out of the same crime, the applications were consolidated, jointly heard and are being disposed of by this common order.

2. The crux of the prosecution case is that, on

03.04.2024, at around 18.30 hours, the accused, in prosecution of their common intention, had formed themselves into an unlawful assembly due to their previous animosity towards the de facto complainant and his friends, wrongfully restrained the de facto complainant and his friends, and the first accused stabbed one Akshay and Santhosh who were along with the de facto complainant with an intention to murder them. Then, the first accused also stabbed Prajith and the de facto complainant, and all the other accused assaulted the de facto complainants friends namely, Shahil, Santhosh, Abhilash, Manoj, Ajith and Sujith with knives and other deadly weapons. Due to the grievous injuries suffered by Akshay, he succumbed to his injuries and the injured Santhosh succumbed to the injuries on 04.04.2024. Thus, the accused have committed the above offences.

3. Heard; Sri.Nireesh Mathew, Sri. Ashik K.

Mohamed Ali, and Sri. Santhosh M.J, the learned counsel appearing for the petitioners and Sri.C.K.Suresh, the learned Special Public Prosecutor and Smt.

Seetha S., the learned Senior Public Prosecutor.

4. The learned counsel appearing for the

petitioners strenuously argued that the petitioners are totally innocent of the accusations levelled against them. A reading of the First Information Report and the final report would establish that the specific overt acts are only alleged against the accused 1 to 4 and 9, who have committed the predicate offence under Section 302 of

the IPC. The allegation against the petitioners is that they were along with the other accused when the above incident occurred. By no stretch of imagination can the offences under Sections 307 and 302 be attributed against the petitioners, who have allegedly played only a very minor role. In any given case, the accused 5,13 and 17 have been in judicial custody for the last 113 days, and the accused 18 and 19 have been in judicial custody

for the last 65 days. The investigation in the case is complete, recovery has been effected and the final report has been laid on 30.6.2024. Hence, the petitioners further detention is unnecessary. Hence, the applications may be allowed.

5. The learned Public Prosecutors seriously

opposed the applications. The Investigating Officer has filed a bail objection report, inter alia, contending that the accused are habitual offenders and have committed a double murder. Even though the final report has been laid, the same is not a ground to release the petitioners on bail in view of the law laid down in Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another, [(2004) 7 SCC 528]. If the petitioners are released on bail, there is every likelihood of them intimidating the witnesses and tampering with evidence. Moreover, it would send a wrong message to the society. Therefore, the applications may be dismissed.

6. The prosecution allegation is that, the accused

in prosecution of their common intention, wrongfully restrained the de facto complainant and his friends and the accused 1 to 4 and 9 inflicted grievous injuries

on the injured and two persons named Akshay and Santhosh lost their lives in the incident.

7. On a meticulous scrutiny of the First Information

Report, the bail objection report as well as the final report, it can be seen that the specific overt act of stabbing the injured has been attributed against the accused 1 to 4 and 9. Apparently, there is no specific overt act alleged against the petitioners. However, that is a matter ultimately decided after trial. Moreover, as per the bail objection report the petitioners do not have any criminal antecedents. The fact remains that the petitioners have been in judicial custody for the period between 113 and 65 days, the investigation in the case is complete, recovery has been effected and the final report has been laid on 30.06.2024.

8. 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.

9. 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.

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. In bail applications, generally, it has been laid

down from the earliest times that, the object of bail is to secure the appearance of the accused person for trial. The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

13. On an overall consideration of the facts, the

rival submissions made across the Bar, and the materials placed on record, particularly considering the fact that there is no specific overt act alleged against the petitioners so as to attract the predicate offence under Section 302 of IPC, the petitioners have been in judicial custody for the period between 113 and 65 days, the investigation in the case is complete, recovery has been effected and the final report has been laid on 30.06.2024 and further that the petitioners do not have any criminal antecedents, 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.50,000/- (Rupees fifty thousand only) each 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 third Saturday between 9 a.m. and 11 a.m till the conclusion of the trial in Crime No.

481/2024. They shall also appear before the Investigating Officer as and when required;

(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 not leave the territorial jurisdiction of the Court of Session, Thrissur without the previous permission of the jurisdictional court;

(v) The petitioners shall surrender their passports,

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].

(x) The observations made in this order are only for the purpose of considering the applications and the same shall not be construed as an expression on the merits

of the case to be decided by competent Courts. SD/- C.S.DIAS, JUDGE
rmm/24/7/2024

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