

Vishnu vs State of Kerala Represented by the Public Prosecutor High Court of Kerala

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Court : Kerala

Decided On : Sep-30-2023

Judge : Honourable Mr.Justice Mohammed Nias C.P.

Appeal No. : Bail Appl./1237/2023

Appellant : Vishnu

Respondent : State of Kerala Represented by the Public Prosecutor High Court of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.
SATURDAY, THE 30TH DAY OF SEPTEMBER 2023 / 8TH ASWINA,
1945 BAIL APPL. NO. 1237 OF 2023 CRIME NO.1876/2020 OF Kollam
East Police Station, Kollam PETITIONER/ACCUSED NO.1: VISHNU,
AGED 31 YEARS S/O PAVITHRAN, SOBHA MANDIRAM,
LEKHSHMANA NAGAR-31 ASHRAMAM CHERRY, KOLLAM EAST
VILLAGE, ASHRAMAM PO, KOLLAM (DIST)-, PIN - 691002 BY ADV
M.RAJESH RESPONDENT/COMPLAINANT & STATE:

1 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 THE SUB INSPECTOR OF POLICE KOLLAM EAST POLICE STATION CHINNAKKADA PO KOLLAM, PIN - 691001 BY ADVS. ADVOCATE GENERAL OFFICE KERALA DIRECTOR GENERAL OF PROSECUTION(AG-10) P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC PROSECUTOR() SRI.SAJJU.S., SENIOR G.P.() BY SMT.NEEMA.T.V., SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27.09.2023, THE COURT ON 30.09.2023 DELIVERED THE FOLLOWING: MOHAMMED NIAS C.P.J Dated this the 30th day of September, 2023

ORDER

This is an application filed under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail.

2. The petitioner is the first accused in Crime No.1876 of 2020 of Kollam

Police Station, Kollam District, for having committed offences punishable under Section 120b, 143, 144, 147, 148, 449, 294(B), 506(II), 341, 323, 324 and 302 r/w Section 149 of the Indian Penal Code.

3. The prosecution case, in brief, is that, on 02.06.2020, the applicant and the

other co-accused, totalling five in number, hatched a conspiracy at a place called Pallikkal junction to commit murder of a person named Udayakiran @ Kichu and in accordance with that conspiracy, on the very same day at about 10 p.m, the applicant and the co-accused formed an unlawful assembly, committed riot, and in prosecution of the common object of the said unlawful

assembly, trespassed into the property of the deceased, hurled abuses at him, intimidated him wrongfully restrained him, and the first accused armed with deadly weapon like a knife stabbed him to death.

4. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor for the State.

5. The learned counsel appearing for the petitioner would say that the

petitioner is innocent and falsely implicated with ulterior motives and that he was seriously injured in the incident. At any rate, he points out that the petitioner is in custody from 03.06.2020, and continued custody of the petitioner is unnecessary. It is also argued that the prosecution is finding ways to delay the trial.

6. The learned Public Prosecutor opposed the petition on the basis of the report filed.

7. After considering the rival submissions, it is to be noted that the petitioner

has not at all contributed to the delay in the trial of the case, and this is evident from the proceedings sheet made available by the learned counsel for the petitioner. The prosecution made a request for further investigation at a very late stage of the proceedings. All the other four accused are already enlarged on bail. While granting bail to the fifth accused, who also had

antecedents against him, this Court specifically found that the directions to expedite the trial passed on 10-2-21 and 9-11-21 were not complied with. The contention of the learned counsel for the petitioner that in most cases shown by the prosecution as antecedents against the petitioner, he has been acquitted, is not controverted. The length of incarceration of the petitioner

from 3-6-2020 cannot be ignored while considering this application. The Hon'ble Apex Court in *Gudikantt Narasimhulu v. Public Prosecutor, High Court of A.P.* [AIR 1978 (sc) 429] has held that a man on bail has a better chance to prepare of present his case than one remanded in custody.

The Hon'ble Apex Court in *Dataram Singh v. State of Uttar Pradesh* (2018 3 SCC 22) has held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. The

judgment of the Hon'ble Supreme Court in Rabi Prakash v. The State of Odisha in Special Leave to Appeal (Crl.) No.4169 of 2023, dated 13.07.2023, is also relevant as the Apex Court found that prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India.

Accordingly, this application is allowed, and the petitioner is granted bail subject to the following conditions:-

(i) The petitioner shall be released on bail on 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 jurisdictional court;

(ii) The petitioner shall report before the Investigating Officer as and when directed.

(iii) The petitioner shall not tamper or attempt to tamper with the evidence or influence or try to influence the witnesses;

(iv) The petitioner shall not be involved in any other crime while on bail or leave the State of Kerala without getting prior permission of the Court concerned.

(v) The petitioner shall appear before the trial court on all posting dates

without fail, except when specifically exempted by the Court. (vi)The petitioner shall not enter the jurisdictional limit of Kollam District except to comply with condition No. (v) or to comply with any court conditions;

(vii) The petitioner shall surrender his passport, if any, within seven days from

the date of his release before the Court concerned, and if the release of the passport is required at a later period, the petitioner shall be at liberty to move an appropriate application for the same before the court having jurisdiction. If he has no passport, he shall file an affidavit to that effect before the court concerned on the date of execution of the bond or within three days thereafter.

(viii) If any of the conditions are violated, the court concerned will be empowered to take steps for cancellation of bail as per law;

Sd/- MOHAMMED NIAS C.P. JUDGE dtk 29.9.2023 APPENDIX OF BAIL APPL. 1237/2023 PETITIONER'S ANNEXURES Annexure1 THE TRUE COPY OF THE ORDERS OF HON'BLE COURT OF KERALA DATED 10.02.2021 IN BA NO. 1315/2021 Annexure2 THE TRUE COPY OF THE ORDERS OF HON'BLE COURT OF KERALA IN BA NO. 10187/2022 DATED 10.01.2023 Annexure -3 THE TRUE COPY OF THE REPORT DATED 07.08.2023 OF THE INVESTIGATING OFFICER INSPECTOR SHO, KOLLAM EAST POLICE STATION Annexure-4 THE TRUE COPY OF THE ORDERS OF THE HON'BLE ADDL DISTRICT & SESSIONS COURT-II, KOLLAM IN SC NO. SERVICES Annexure-5 THE TRUE COPY OF THE JUDGEMENT OF THE APEX COURT IN RABI PRAKASH VS STATE OF ODISSA (SLP (CRL) NO.

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