

Prabeesh vs State of Kerala

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Court : Kerala Orders

Decided On : May-25-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Bail Appl./2552/2023

Appellant : Prabeesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS THURSDAY, THE 25TH DAY OF MAY 2023 / 4TH JYAISHTA, 1945 AGAINST THE ORDER/JUDGMENTSC 879/2021 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - III, ALAPPUZHA / III ADDITIONAL MACT, ALAPPUZHA PETITIONER/1ST ACCUSED: PRABEESH AGED 36 YEARS PRABEESH, S/O SADANANDAN POOKAN VEEDU, MUTHUKADU MURI NILAMBUR, MALAPPURAM, PIN - BY ADV G.RANJITA RESPONDENT/STATE/DEFACTO -COMPLAINANT: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM,, PIN - 682031 OTHER PRESENT: PP

SRI.NOUSHAD K.A THIS BAIL APPLICATION HAVING COME UP FOR
ADMISSION ON 25.05.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

----- B.A. No.2552 of 2023
----- Dated this the 25th day of May, 2023

ORDER

Petitioner is the 1st accused in Crime No. 282/2021 of Nedumudi Police Station, Alappuzha, which is now pending as S.C.No.879/2021 on the files of the Additional Sessions Court- III, Alappuzha.

2. According to the prosecution, the petitioner along with

the 2nd accused had caused the murder of one Anitha pursuant to a criminal conspiracy on 9-07-2021, After throttling and smothering her she was dumped into a river and thereby causing the death of the said Anitha as well as her foetus. The prosecution alleges that the accused had committed the offences under Section 120B, 316, 302, 201 r/w Section 34 of the Indian Penal Code, 1860.

3. Adv.Shifana along with Adv.G.Ranjita vehemently

contended that petitioner has been in custody since 13-07- 2021 and that the long period of detention already undergone, by itself is a sufficient reason to release him on bail. It was further submitted that the possibility of an immediate trial is very remote and therefore, the petitioner ought to be released on bail. Relying upon various judgments of the Supreme Court as well as that of other High Courts the learned counsel submitted that when trial cannot be completed or commenced, the continued incarceration of the accused would cause great prejudice and injustice will be meted out to such accused. Relying upon the aforesaid propositions it was submitted that petitioner ought to be released on bail. The learned counsel also submitted that since the 2nd accused has already been released on bail, the principle of parity must be applied to confer the benefit of bail to the petitioner.

4. Sri.K.A Noushad, the learned Public Prosecutor on the

other hand submitted that petitioner is an accused in a ghastly murder of the aforementioned Smt.Anitha and her foetus. It was further submitted that this Court had, on an earlier occasion, while declining to grant bail to the petitioner observed, after perusing the entire case diary that, the case was one fit for a custodial trial. The learned public prosecutor further submitted that the principle relied upon by the learned counsel for the petitioner regarding undue delay in the trial does not apply since the case is already posted to June 2023 before the trial Court for framing of charge and therefore, there is a possibility of an immediate trial. In any event, the learned public prosecutor submitted that petitioner does not deserve any leniency and that if he is released on bail there is every chance that he may indulge in similar other offences and even abscond.

5. I have considered the rival contentions.

6. Petitioner is alleged to have caused the death of a lady along with her foetus by throttling and smothering her and thereafter dumping her into a river. He was arrested on 13-07-

2021. Even though almost 22 months have elapsed since his

detention, I am of the view, considering the nature of the allegations as well as the observation of this Court on essentially of a custodial trial that this is not a fit case for grant of bail, despite the vehement arguments of the learned counsel for the petitioner.

7. It is true, as pointed out by the learned Public

Prosecutor that in the order dated 31-08-2022, this court had already observed that this is a fit case for custodial trial. The said finding has not been set aside or interfered with. Further since the case is already posted for framing of charge in the month of June 2023. I am of the view that the contention that there is no possibility of an immediate trial is baseless.

8. Even otherwise, the alleged act committed allegedly by

the petitioner was gruesome and horrific. The possibility of the accused running away from the jurisdiction of the Court cannot also be ruled out especially he is alleged to be a wayfarer. Therefor, petitioner is not entitled to be released on bail. Accordingly this bail application is dismissed. BECHU KURIAN THOMAS JUDGE
AJM

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