

Smith, vs State of Kerala,

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Court : Kerala Orders

Decided On : Feb-28-2022

Judge : Honourable Mrs. Justice Shircy V.

Appeal No. : Bail Appl./4867/2021

Appellant : SMITH,

Respondent : State of Kerala,

Judgement :

BAIL APPL. NO. 4867 OF 2021 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHIRCY V. MONDAY,
THE 28TH DAY OF FEBRUARY 2022 / 9TH PHALGUNA, 1943 BAIL
APPL. NO. 4867 OF 2021 PETITIONER/ACCUSED NO.7 SMITH, AGED
44 YEARS S/O. SANKARANARAYANAN, KAREPARAMBIL HOUSE,
PERIMGOTTUKARA DESOM, KIZHAKUMURI VILLAGE, THRISSUR-
680565. BY ADVS. S.RAJEEV K.K.DHEERENDRAKRISHNAN V.VINAY
M.S.ANEER RESPONDENT: STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-
682031. (CRIME NO. 1225/2020 OF ANTHIKKAD POLICE STATION,
THRISSUR DISTRICT) BY ADVS. SHRI.P.NARAYANAN,

ADDL.PUBLIC PROSECUTOR DIRECTOR GENERAL OF
PROSECUTION PUBLIC PROSECUTOR OTHER PRESENT: THIS
BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.02.2022, THE COURT ON 28.02.2022 DELIVERED THE
FOLLOWING: BAIL APPL. NO. 4867 OF 2021 2

ORDER

This successive application for bail has been preferred by the 7th accused who is described by the investigating agency as the gang leader of 'Smith' group, involved in various crimes in and around Anthikad station limits, in Thrissur district.

2. The petitioner has been in custody since 20.10.2020 in

connection with Crime No.1225/2020 registered punishable under Sections 341, 302, 392, 120B, 506(ii), 212, 109, 201 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act.

3. The prosecution allegation is that pursuant to the criminal

conspiracy hatched between all the accused, under the leadership of this petitioner on 10.10.2020 at about 11.55 a.m the accused 1 to 6 came in a motor car near to Mangattukara Vattukulam temple with the intention to commit murder of one Nidhil (the brother of the

defacto complainant) and waited for him. When Nidhil was proceeding in his car the accused rammed their car towards his car and thus purposefully colluded with his car. When he stopped the car, the accused armed with deadly weapons ran towards him and dragged him out of the car and inflicted several injuries on his body

BAIL APPL. NO. 4867 OF 2021 3 with the intention to murder him. All them were carrying weapons such as sword, knife, axe etc. and they together had inflicted fatal injuries on him and fled away from the place of occurrence leaving him on the public road. Though the injured was rushed to the hospital he succumbed to the injuries and thereby the accused committed the aforesaid offences.

4. Heard the learned counsel for the petitioner as well the learned Public Prosecutor.

5. The main allegation levelled against this petitioner is that he

is conducting a chitty business in Thrissur. He is having a gang of criminals and he is controlling them for his business purpose. It has become a usual affair between the rival group to have clashes between them due to the pre-existing rivalry in which murder and such serious offences are happening quite often. Though the prosecution records indicate that this petitioner was not present at the place of occurrence, the incident happened pursuant to the criminal conspiracy hatched between the accused under his leadership. In short, he is the master mind of the alleged incident and as the gang leader of smith group he is controlling the illegal activities of this group and his arrest was after collecting materials BAIL APPL. NO. 4867 OF 2021 4 including CDR details.

6. The learned Public Prosecutor opposed the application raising

various contentions. Firstly it was contended that this crime occurred as a result of a gang war between two rival groups operating in Anthikkad area headed by one Sumesh in one group and by Smith (the petitioner herein) in the other group. The members in both the groups are youngsters indulging in various criminal and illegal activities in the locality. Due to the gang rivalry they often used to confront with each other affecting the law and order situation in the area. While so, one Adarsh a member of the gang of Smith was brutally murdered by the other group headed by Sumesh on 2.7.2020. Crime No.964 of 2020 was registered against nine accused and they were arrested. The deceased Nidhil in this case is an accused in Crime No.964 of 2020. He was released on bail and to comply with the bail conditions he had to appear before the police on certain days. On the fateful day he came to the police station to comply with the bail condition. After appearing before the police while he was returning back in his car the accused have committed his murder. The murder was a pre-meditated one due to their enmity towards him for having killed Adarsh. So as a reply to the murder of

BAIL APPL. NO. 4867 OF 2021 5 Adarsh they made preparations after hatching criminal conspiracy on several days under the leadership of this petitioner with all the accused thirteen in number and thus committed the offence.

7. Further it is argued that though the investigation of the case is over and it is pending trial if the petitioner is released on bail there is every chance for retaliation. That will definitely affect the law and

order situation. Moreover, the life of the witnesses to the prosecution

are also under threat as there is every possibility to intimidate them if released on bail. The possibility of absconding also cannot be ruled out. The petitioner is having very bad criminal antecedents as he is involved in eight cases registered before Anthikkad police station in Thrissur District. In crime No. 147/2006 registered for the offences under section 143,147,148,324,307 r/w 149 IPC he was even

convicted. So his bail application is strenuously opposed by the prosecution.

8. The deceased in this case was also an youngster aged only

28 years. His postmortem certificate would reveal that he has sustained 69 injuries in the incident. The prosecution case itself is that the other accused persons who participated in committing the offence were armed with deadly weapons such as axes, sword, knife BAIL APPL. NO. 4867 OF 2021 6

etc. In a most brutal manner he was attacked by the accused and his group and executed the plot. Grave, serious and murderous injuries were inflicted on him. The nature of the injuries caused to him as revealed from the postmortem certificate itself is sufficient to reflect the serious nature and gravity of the offences committed by them. Extensive injuries were caused by all of them with deadly weapons while the deceased was unarmed. The records would further reveal that the accused 1 to 6 fled away from the spot after executing the murder with blood dripping weapons in a car and motor cycle

happened to be on the road by threatening its driver and rider.

They are the prime witnesses to the prosecution. After inflicting injuries on the deceased the accused attempted to escape from the place of occurrence in the car which they came to the spot. But due to some mechanical defect they could not start their vehicle and so they intercepted the vehicles driven by the witnesses and thus fled away from the place of occurrence. Most of the witnesses are ordinary people. The character and the criminal antecedents of the petitioner would show that there is every possibility to threaten and intimidate them to abstain them from speaking the truth before the court. Moreover, it is revealed from the records that the two gangs

BAIL APPL. NO. 4867 OF 2021 7 are in the habit of entering into encounters quite often and in one such incident Adarsh was murdered. So retaliation from the other group will definitely be there. The petitioner is involved in eight other cases which includes Section 307 and 308 of the Indian Penal Code.

9. The learned Public Prosecutor has contended that though

he was not present at the place of occurrence everything had happened as pre-planned by him and as per his instructions. So he is the kingpin of the alleged incident. This court while considering his earlier application observed that as he being the prime financier of the criminal gang, granting of bail to him will adversely affect the case and the possibility of retaliation from the other group which affects the law and order situation of the area is also there. So taking

into consideration of all those facts especially his criminal antecedents, the court declined his prayer for bail.

10. It is well settled that a second application for bail can be

considered only if there are factual and legal ground so as to have a fresh look to the case. Here, the learned counsel for the petitioner could not point out any new facts or grounds so as to have a fresh look to the facts of the case. In Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu BAIL APPL. NO. 4867 OF 2021 8 Yadav and another [AIR 2004 SC 1866] the Apex Court held as follows:- "In

regard to cases where earlier applications have been rejected there is a further onus on the Court to consider the subsequent application for

grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the Court is of the opinion that bail has to be granted then the said Court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted

11. Further it is observed that Court has a duty to record what are the fresh grounds which persuade to take a view different from the one taken in the earlier application.

12. Here apart from the mere fact that he had undergone certain period of incarceration no fresh reasons or grounds are there to take a different view to enlarge him on bail.

13. Of-course the learned counsel for the petitioner

highlighting the fact that the physical presence of this petitioner was not there at the time of occurrence, has sought for his release on bail. But, the investigating agency had collected the call details and other materials which would prima facie reveal the active participation and involvement of this petitioner in this brutal and heinous crime. The deceased though an accused in Adarsh murder BAIL APPL. NO. 4867 OF 2021 9 case was proceeding back after complying with his bail conditions unarmed in his car. The accused as designed by them under the leadership of this petitioner, brutally attacked him causing 69 injuries

on his body. As a result of the gravity of the injuries sustained by him, instantaneous death was caused to him. Prima facie, I could find that he could influence the course of trial by intimidating the witnesses. He also had the economic capacity to tamper with the evidence and thus to interfere with the trial of the case.

14. Since, I am fully convinced that granting of bail will result

in further retaliation by the other group affecting the law and order

situation of the place as well the other ground that there is every

possibility to intimidate the witness to the prosecution who are supposed to depose without any fear or favour before the trial court, I find that the petitioner is not entitled to be released on bail. Moreover as pointed out he could not highlight any new facts or grounds to have a fresh look to the case so as to enlarge him on bail. His criminal antecedents also looms large to dismiss this petition. As he is a habitual offender if enlarged on bail, he will definitely exploit the situation. The larger interests of the public cannot be neglected in the given set of facts. While exercising the discretion of the Court

BAIL APPL. NO. 4867 OF 2021 10 judiciously and cautiously this Court cannot ignore the gravity of offences alleged, character of the accused especially his criminal antecedents as well the criminal antecedents of his gang and also the

possibility of retaliation and enlarge him on bail Therefore, I hold that the petitioner is not entitled to be released on bail as requested by the learned counsel. However, the learned Sessions Judge shall endeavor to dispose of the case at the earliest considering the period of incarceration undergone by this petitioner in custody.

Dismissed. Sd/- SHIRCY V JUDGE smm6+

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