

Arun vs State of Kerala

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Court : Kerala

Decided On : Jul-29-2022

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Crl.MC/4067/2022

Appellant : ARUN

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
FRIDAY, THE 29TH DAY OF JULY 2022 / 7TH SRAVANA, 1944
CRL.MC NO. 4067 OF 2022 AGAINST THE ORDER IN Crl.R.P.13/2022
OF SESSIONS COURT, THIRUVANANTHAPURAM DTD.10.6.2022
Crime No.2787/2020 of Vellarada Police Station
PETITIONER/ACCUSED: ARUN AGED 29 YEARS S/O. SASIDHARAN
PLANKALAPUTHEN VEEDU, THRESSIAPURAM, KUNNATHUKAL,
FROM ARUN BHAVAN, PATHAMKALLU, ATHIYANOR VILLAGE, PIN
- 695123 BY ADVS.RENJITH B.MARAR LAKSHMI.N.KAIMAL ARUN
POOMULLI AISWARYA THANKACHAN MEERA JOPPAN
RESPONDENTS/STATE & DE FACTO COMPLAINANT: 1 STATE OF

KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 * ADDL.R2 FELIX.C AGED 21 YEARS, S/O.CHRISTUDAS, PLANKALA PUTHENVEEDU, THRESYAPURAM, KARAKONAM POST, THIRUVANANTHAPURAM DISTRICT

***(ADDL.R2 IS IMPEADED AS PER ORDER**

DTD.29.7.2022 IN Crl.M.Appln.No.2/2022) BY ADVS.AJIT G ANJARLEKAR GOVIND PADMANAABHAN ATUL MATHEWS G.P.SHINOD OTHER PRESENT:SRI.SANGEETHA RAJ Public Prosecutor THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29.07.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ..2..

ORDER

Annexure-A4 order passed by the Sessions Court, Thiruvananthapuram is under challenge in this Crl.M.C.

2. The petitioner herein is the accused in Crime No.2787/2020 of Vellarada Police Station. The offence alleged against the accused is punishable under Section 302 of the IPC.

3. The prosecution allegation is that the petitioner with the intention to grab the wealth of his wife murdered her by electrocution and smothering.

4. The petitioner was arrested on 27.12.2020 and

remanded to judicial custody. The Bail Applications filed by him during the crime stage at the Sessions Court as well as at this Court were dismissed. Subsequently, at the committal stage, the petitioner filed another Bail Application invoking Section 437 of the Cr.P.C. The learned Magistrate granted bail to the petitioner as per Annexure-A2 order. The said order was challenged by the State at the Sessions Court. The Sessions Court, as per Annexure-A4 order, set aside Annexure-A2 order. ..3.. Challenging the said order, the accused preferred this Crl.M.C. The de facto complainant got impleaded as additional respondent No.2 in

this Crl.M.C.

5. I have heard Sri.Renjith.B.Marar, the learned counsel for the petitioner, Sri.Shinod, the learned counsel for the 2nd respondent and Sri.Sangeetha Raj, the learned Public Prosecutor.

6. As stated already, the Sessions Court in

Crl.M.C.No.272/2021 dated 2.2.2021 dismissed the bail application filed by the petitioner on merits. This Court also in Bail Appln.No.1919/2021 dismissed the bail application filed by the petitioner on merits on 23.3.2021. It appears that, without taking note of those facts, the learned Magistrate as per Annexure-A2 order granted bail to the petitioner. The Sessions Court relying on the judgment of the Supreme Court in Jayaraj v. State of Kerala [2009 (3) KHC 577] took the view that Annexure-A2 order passed by the learned Magistrate is illegal, irregular and is in violation of judicial discipline and propriety. ..4..

7. Considering the fact that the bail applications were

dismissed by the Sessions Court as well as the High Court on merits, when another Bail Application was moved before the Magistrate subsequently, the Magistrate ought to have directed the petitioner to approach either the Sessions Court or the High Court again. Hence, I find no illegality or impropriety in the impugned order passed by the Sessions Court.

8. Annexure-A2 order was passed as early as on

03.04.2021. Now more than one year have been elapsed thereafter. When the Bail Applications were dismissed by the Sessions Court and the High Court, the investigation was not over. Now, the investigation is over and committal proceedings is pending. Highlighting these circumstances, Sri.Renjith.B.Marar, the learned counsel for the petitioner submitted that the detention of the petitioner is not at all required for the purpose of investigation. The learned counsel further submitted that the petitioner is prepared to co-operate with the committal proceedings as well as subsequent trial at the Sessions Court. The counsel also submitted that, in case ..5.. this Court confirms the impugned order, the petitioner

may be given an opportunity to move for regular bail invoking Section 439 of the Cr.P.C. before this Court. I find the said submission to be reasonable.

9. In view of the above facts, this Crl.M.C. is disposed of as follows:-

(i) The impugned order is confirmed.

(ii) The petitioner is at liberty to file an application for regular bail invoking Section 439 of the Cr.P.C. either before this Court or before the Sessions Court within a period of ten days from today.

(iii) The petitioner shall not be arrested till the

said bail application is disposed of. Sd/- DR.KAUSER EDAPPAGATH, JUDGE skj
..6.. APPENDIX OF CRL.MC 4067/2022 PETITIONER'S ANNEXURES Annexure
A1 TRUE COPY OF THE ORDER OF THIS COURT DATED 23.03.2021 IN B.A.
NO. 1919/2021 Annexure A2 TRUE COPY OF THE ORDER DATED 03.04.2021
IN CP.NO.24 OF 2021 PASSED BY THE JUDICIAL FIRST CLASS
MAGISTRATE- III, NEYYATTINKARA Annexure A3 TRUE COPY OF THE
OBJECTION PREFERRED BY THE PETITIONER/ACCUSED. Annexure A4
CERTIFIED COPY OF THE ORDER DATED 10.06.2022 IN CRL.R.P.NO.13 OF
2022 PASSED BY THE SESSIONS COURT, THIRUVANANTHAPURAM

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