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Akhil vs State of Kerala

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Court : Kerala

Decided On : Feb-28-2022

Judge : Honourable Mrs. Justice Shircy V.

Appeal No. : Bail Appl./8201/2021

Appellant : AKHIL

Respondent : State of Kerala

Judgement :

B.A.No.8201 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. 8201 OF 2021 AGAINST THE ORDER/JUDGMENT IN CRMC 1223/2021 OF DISTRICT COURT & SESSIONS COURT,THRISSUR PETITIONER/S: AKHIL AGED 22 YEARS S/O. SHAJI, MOOTHRATHIPARAMBIL HOUSE, THANIAM DESOM & VILLAGE, THRISSUR DISTRICT BY ADV E.VIJIN KARTHIK RESPONDENT/S: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA-682 031. BY ADVS. SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR

DIRECTOR GENERAL OF PROSECUTION GOVERNMENT PLEADER THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11.2.2022, THE COURT ON 28.2.2022 DELIVERED THE FOLLOWING: B.A.No.8201 of 2021 2

ORDER

By this application the 6 th accused who is undergoing incarceration in connection with Crime No.1225 of 2020 of Anthikkad police station registered for the offences punishable under Sections 341, 302, 120B, 392, 506(ii), 212, 109, 201 read with Section 34 of IPC and Section 27 of the Arms Act ,is seeking his release on bail.

2. The petitioner has been in custody since 14.10.2020 .

3. The prosecution allegation is that pursuant to the criminal

conspiracy hatched between all the accused, 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 another car the accused rammed their car towards his car and 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 with the intention to murder him. They were having sword, knife, axe etc. and all the accused together had inflicted injuries on him and fled away from the place of occurrence leaving the injured on

B.A.No.8201 of 2021 3 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. Though the learned counsel has argued that he has been falsely implicated in the case, the prosecution records would indicate that he had actively participated in committing the offence.

6. The learned Public Prosecutor opposed the application raising various contentions.

7. Mainly, 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 one Smith in the other group. The members in both the groups are youngsters indulged 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

B.A.No.8201 of 2021 4 bail and to comply with the bail condition 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 the accused have attacked him with deadly weapons and caused his death. The murder was a premeditated one due to their enmity towards him for having killed Adarsh. So as a reply to the murder of Adarsh they made preparations after hatching criminal conspiracy on several days with all the accused thirteen in number and thus committed the offence.

8. According to the learned Public Prosecutor 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 six cases

registered before various police stations in Thrissur District. So his bail application is only to be dismissed.

9. It is true that this petitioner is aged only 22 years. The deceased in this case was also an youngster aged only 28 years. His B.A.No.8201 of 2021 5

postmortem certificate would reveal that he has sustained 69 ante mortem injuries in the incident. The prosecution case itself is that all the six accused persons who participated in committing the offence were armed with deadly weapons such as axes, sword, knife etc.

The records would indicate that in a most brutal manner he was attacked by the petitioner and his group. Grave and serious 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 inflicted by all of them with deadly weapons while the deceased was unarmed.

10. The prosecution case itself is that the accused after

committing murder of the deceased escaped from the spot in a car and motor cycle which happened to pass through the road at that point of time. The alleged incident took place in the broad day light. 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 a car and motor cycle and forcefully took its control and escaped from the scene of occurrence with the blood-soaked weapons. They are the prime witnesses to the B.A.No.8201 of 2021 6 case. Other witnesses are also cited by the prosecution to prove the case. Most of the witnesses are ordinary people. The character and the criminal antecedents of the petitioner would support the apprehension expressed by the prosecution that there is every possibility to threaten and intimidate them to abstain from speaking truth before the court.

11. The learned Public Prosecutor has mainly opposed the

application for bail because of chain of occurrence of crime that took place in the limits of Anthikkad police station and surrounding police stations. It is also pointed

out by the learned Public Prosecutor that the gang leader in which this petitioner is involved is Smith the 7 th accused and he is the master mind of the various crimes in which his group is involved.

12. As mentioned earlier, the case is pending for trial before

the court below. Granting of bail to an accused especially in brutal murder cases are subject to certain important conditions. The Supreme Court has laid down the basic principles governing grant of bail in a plethora of decisions. In Prasanta Kumar Sarkar v. Ashis Chatterjee and Another [(2010) 14 SCC 496], in paragraph 9, it is held as follows:

B.A.No.8201 of 2021 7 9. ..... It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation:

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likeliood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. In Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another [AIR 2004 SC 1866] the Apex Court observed as follows:

> 11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the

merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non- application of mind. It is also necessary for the Court granting bail to consider among other circumstances, the following factors also

B.A.No.8201 of 2021 8 before granting bail; they are,

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

(b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(c) Prima facie satisfaction of the Court in support of the charge. See Ram Govind Upadhyay v. Sudarshan Singh and others (2002(3) SCC 598) and Puran v. Rambilas and another (2001 (6) SCC 338)

13. Though an extensive evaluation of the details involved in

the case is not expected while considering a bail application as the trial has to commence in the case, the court cannot ignore and shut its eyes towards the glaring circumstances involved in the case. Prima facie it is revealed that murder was a result of the gang war between two groups. Therefore, the possibility of retaliation affecting the law and order situation as well creating terror in the locality can not be ruled out. The brutal nature of the attack is revealed from the injuries sustained by the deceased from the post mortem certificate. The murder was as a result of the retaliation to a murder which happened just three months back. Prima facie it appears that the

petitioner and co-accused are persons having no respect towards law and order and they are having no hesitation to indulge in criminal activities and thus to create law and order situation in the B.A.No.8201 of 2021 9

locality. The mere fact that trial has not been commenced and there is possibility to get the case delayed are not sufficient grounds to enlarge the petitioner on bail. When the petitioner and his gang are having the capacity to tamper with the evidence and to intimidate the witnesses to the prosecution, their safety has much importance when it is compared with the liberty of the accused. Prima facie there are reasonable grounds to find the active participation and involvement of the petitioner in the alleged crime.

14. Taking into account of all these facts and circumstances , I find that this petitioner is not entitled to be released on bail just considering the period of incarceration. 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 smm

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