SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Ambady vs State of Kerala

Ambady vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1619091

Court : Kerala Orders

Decided On : Apr-22-2021

Judge : Honourable Mr. Justice Ashok Menon

Appeal No. : Bail Appl./2600/2021

Appellant : Ambady

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ASHOK MENON THURSDAY, THE 22ND DAY OF APRIL 2021 / 2ND VAISAKHA, 1943 Bail Appl..No.2600 OF 2021 CRIME NO.859/2020 OF Munambom Police Station , Ernakulam PETITIONER/S: AMBADY AGED 19 YEARS S/O ANDROSE, KAIPOL HOUSE, NEAR RAMAVARMA SCHOOL, AYYAMPILLY, KOCHI, ERNAKULAM DISTRICT.

BY ADVS. SHRI.BIJU ANTONY ALOOR SRI.K.P.PRASANTH SMT.T.S.KRISHNENDU SMT.ARCHANA SURESH RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA 2 THE STATION HOUSE OFFICER MUNAMBAM POLICE STATION ERNAKULAM DISTRICT,

PIN-683515. R1-2 BY ADDL.DIRECTOR GENERAL OF PROSECUTION OTHER PRESENT: ADGP- SRI. C.K SURESH KUMAR (SR.PP) THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 25.03.2021, THE COURT ON 22.04.2021 PASSED THE FOLLOWING:

O R D E R

Dated this the 22nd day of April 2021 Application for regular bail under Section 439 Cr.P.C.

2. The applicant is the fourth accused in Crime

No.859 of 2020 of Munambam Police Station, Ernakulam, for having allegedly committed offences punishable under Sections 302, 120B, 212 and 201 read with Section 34 of the IPC. The prosecution case, in a nutshell, can again be stated thus:

3. On 22.09.2020, at about 4.15 AM, the deceased

allegedly got information over his facebook account from a girl he was fond of inviting him to reach Pallathamkulangara Beach so that they could interact. Believing that the message he had received is from his girlfriend, he reached the scene of occurrence. In fact, it was not the girl, who sent the message. But, using her Facebook account, it was the 1 st accused, who sent the message to the deceased because he was envious about the relationship between the deceased and the girl for whom he too had a liking. He, therefore, hatched a conspiracy with the other accused, who are his friends, to do away with the deceased, and in accordance with that conspiracy, accused Nos.1 to 4 armed with deadly weapons, like knife and wooden rafters, lay-in-wait for the deceased at the beach in accordance with the message which was passed over to him. When the deceased reaching there, he was mercilessly assaulted. The postmortem report indicates 39 anti-mortem injuries which caused his death. The body was recovered much later and the inquest report was prepared at 10.30 AM. Rigour Mortis had already set in by that time.

4. The applicant states that he is innocent and the

allegations are not true, and that investigation has already been completed and the final report has been filed. The applicant is hardly out of juvenility as the rest of the accused, all in their teenage years. It is also stated that the overt act attributed to the accused is negligible. And, therefore, he prays that he may not be detained any longer. The application for bail filed by him before the Magistrate was dismissed. The application filed before the Sessions Judge also met with the same fate. Hence the applicant seeks indulgence from this court. The applications for bail filed by A1 to A3 were all, repeatedly dismissed by this court. The applicant states that the allegations made against him are different. It is also urged that there was delay in furnishing the copies of the 164 statements of witnesses to the accused. Hence, the final report was not complete and the applicant is also entitled to statutory bail.

5. Heard the learned counsel for the applicant and the learned Public prosecutor who very vehemently opposed the application for bail. Records perused.

6. On a very flimsy reason of the deceased being

enamoured by a girlfriend of one of the accused, went to the extreme step and hatched a conspiracy to do away with him, which indicates their proclivity to commit crime. The motive for committing the alleged offence is well established. There is CCTV footage and also statements under Section 164 Cr.P.C, of the girl, who was the girlfriend of the deceased, recorded. She has also given a statement that spells out an extra-judicial confession on the part of some of the accused. There is also an extra-judicial confession allegedly made to the Doctor. All these put together and the CCTV footage and the reasons for the assault are all questioned to service by the prosecution to prove its case against the accused. The fact that the applicant is just hardly out of teenage and that he does not have any criminal antecedents alone will not help him in getting bail.

7. The learned counsel appearing for the applicant

submits that it is with the intention to defeat the provisions under Section 167(2) Cr.P.C, that an incomplete charge sheet had been filed by the prosecution to defeat the statutory bail which the applicant was entitled to. I had called for a report from the jurisdictional Magistrate in which it is stated that all the documents were produced along with the final report. But, certified copies of 164 statements of witnesses that were recorded could not be produced by the prosecution because they had not yet obtained the certified copies of those 164 statements. The fact that those documents were not produced along with the final report does not make that an incomplete final report. And, therefore, I do not find any reason to hold that the applicant is entitled to any benefit for that reason. Now all the records have been produced before the committal court and the copies have been furnished to the accused as submitted by the jurisdictional Magistrate. Therefore, that is also not a good reason for considering the bail application of the accused.

8. The court has to keep in mind what has been stated

by the Apex court in Chaman Lal vs. State of U.P. and another, [2004 (7) SCC 525]. The requisite factors are: (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the court in support of the charge.

9. In Prasanta Kumar Sarkar vs. Ashis Chatterjee and

another [2010 (14) SCC 496], it has been opined that while exercising the power for grant of bail, the court has to keep in mind certain circumstances and factors. It is useful to reproduce the said passage: "9....among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to be believed 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) likelihood 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."

10. From the aforesaid principles, it is quite clear that an

order of bail cannot be granted in an arbitrary or fanciful

manner. In this context, it is also profitable to reproduce a passage from Neeru Yadav vs. State of Uttar Pradesh and another [2014 (16) SCC 508], wherein the Supreme Court setting aside an order granting bail observed thus:

> "The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the 2nd respondent. We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an
>
> individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects

responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law."

11. Applying this rule to the case in hand, I find that

going by the gravity of the offence which the applicant and the other accused have committed, he does not require any mercy. He has to be tried in custody because there are several witnesses, who can be either intimidated or influenced by him and enlarging him on bail would jeopardise the prosecution case. Therefore, the bail application is dismissed and the trial court is directed to expedite the trial and disposal of the case. Sd/- ASHOK MENON JUDGE jg

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com