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Vijin, vs State of Kerala,

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Court : Kerala

Decided On : Apr-24-2020

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./2244/2020

Appellant : VIJIN,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT: THE HONOURABLE MR.JUSTICE C.S. DIAS FRIDAY, THE 24TH DAY OF APRIL 2020/4TH VAISAKHA , 1942 Bail Application No.2244 OF 2020 (CRIME NO.89/2020 OF KATTAKKADA POLICE STATION, THIRUVANANTHAPURAM PETITIONER/1ST ACCUSED: VIJIN, AGED 24 YEARS, S/O.STANLEY JOSE, VIJIN NIVAS, NEAR VISWADEEPTHI SCHOOL, CHARUPARA, KULATHUMMAL VILLAGE, THIRUVANANTHAPURAM. BY ADV.SRI.SHAJIN.S.HAMEED RESPONDENTS/COMPLAINANTS:

1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031.

2. STATION HOUSE OFFICER,

KATTAKADA POLICE STATION, KATTAKADA, THIRUVANANTHAPURAM PIN 695 572. BY Public Prosecutor SrI.Amjad Ali THIS B.A. HAVING BEEN FINALLY HEARD ON 24.04.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

This is an application filed under Section 439 of the Code of Criminal Procedure.

2. The petitioner is the 1st accused in Crime No.89

of 2020 of the Katakada Police Station. The petitioner along with the other accused are alleged to have committed the offences punishable under Sections 143, 147, 148, 447, 379, 302, 212, 201 r/w Section 149 of the Indian Penal Code.

3. The prosecution case, in brief, is that: the accused in the above crime had committed theft from the

property of one Sri.Sangeeth. The accused formed a

Sangeeth with two vehicles. When Sri.Sangeeth attempted to stop the petitioners from committing theft, an altercation occurred and Sri.Sangeeth lost his life. Thus, the petitioner and the other accused have committed the above offences.

4. The petitioner was arrested on 25.01.2020. His application for bail was dismissed by the Sessions Court, Thiruvananthapuram by its order dated 18.02.2020 in Crl.M.C.No.383 of 2020.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor via video-conferencing.

6. The learned counsel for the petitioner argued that the petitioner was arrested on 26.01.2020. It is 90

days since the petitioner is in judicial custody. The petitioner is entitled to the benefit under Section 167(2) of the Code of Criminal Procedure, as the Investigating Officer has not filed his final report. Hence, it is contended that the petitioner may be enlarged on bail. It was also argued that accused Nos. 3 and 5 have been granted bail by this Court in BA.Nos.2047 and 2253 of

2020. Hence, the petitioner is also entitled to a similar

order.

7. The learned Public Prosecutor conceded that

accused 3 and 5 have been granted bail by this Court in BA.Nos.2047 and 2253 of 2020. He also admitted the fact that the petitioner is in custody for the last the 90 days, and that final report has not been filed.

8. The Hon'ble Supreme Court in Sanjay Chandra v. CBI [2012 (1) SCC 40] held as follows: "27. This Court, time and again, has stated that bail

is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution".

9. Recently, the Honourable Supreme Court in

Nikesh Tarachand Shah v. Union of India [2018 (11) SCC 1] after going back to the days of the Magna Carta and after referring to Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565] has reiterated the same view in Sanjay Chandra v. CBI (supra). Again, in P.Chidamabram v. Directorate of Enforcement [(2019) SCC Online SC 1549] the above proposition has been fortified.

10. Having regard to the facts and circumstances of

the case, particularly the fact that the petitioner has been in incarceration for the last 90 days and that the final report has not been filed, the petitioner is entitled for statutory bail, which is his indefeasible right, as provided

under Section 167(2) Code of Criminal Procedure. Similarly, the fact that accused 2 and 3 have already been granted bail by this Court in BA.Nos.2047 and 2253 of 2020, is the circumstance in favour of the petitioner. In view of the categoric declaration of law by of the Honourable Supreme Court in the aforecited decisions and the above mentioned facts and circumstance of the case, I am inclined to allow this bail application.

12. In the result this bail application is allowed, on the following conditions:-

(i) Due to the present National lock-down

> and the closure of Courts, the Jail Superintendent, where the petitioner is incarcerated, is directed to release the petitioner on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed sureties/immediate relatives. The petitioner shall also file an undertaking to the Jail Superintendent that he and his sureties will execute the bail bond before the jurisdictional Court within one week of its re- opening. The Jail Superintendent after ensuring the compliance of the above conditions, shall release the petitioner to the Station House Officer of the Police Station where the crime has been registered, who shall after noting down the above details, release the petitioner. The Investigating Officer shall keep a close vigil on

the whereabouts of the petitioner.

(ii) The petitioner shall within one week

from the re-opening of the jurisdictional Court, if not already re-opened, execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioner shall appear before the Investigating Officer on all Saturdays between 10.00 a.m and 11 a.m till final report is filed.

(iv) The petitioner shall not tamper with the evidence or influence the witnesses in the case, in any manner, whatsoever.

(v) The petitioner shall not commit any offence while on bail.

(vi) The petitioner shall not leave the State of Kerala without the permission of the jurisdictional court.

(vii) Needless to mention that, if the petitioner

violates any of the above conditions, the Station House Officer shall be at liberty to approach the jurisdictional Court and file appropriate application seeking for cancellation of the bail. Sd/- C.S.DIAS, JUDGE kkj/24.04.2020

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