

Rajan, vs the State of Kerala,

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Court : Kerala

Decided On : May-31-2019

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : Bail Appl./2441/2019

Appellant : RAJAN,

Respondent : The State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V FRIDAY, THE 31ST DAY OF MAY 2019 / 10TH JYAISHTA, 1941 Bail Appl..No. 2441 of 2019 SC 423/2018 of ADDITIONAL SESSIONS COURT-I, MANJERI CRIME NO. 72/2018 OF Areacode Police Station, Malappuram

PETITIONER/ACCUSED: RAJAN, AGED 42 YEARS, S/O.VELU, PALATHINGAL HOUSE, POOVATHINKANDI, VALILAPUZHA, AREACODE, MALAPPURAM DISTRICT. BY ADVS. SRI.E.C.AHAMED FAZIL NIYAS MOHAMMED RESPONDENT/STATE: THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM- 682 031. SRI. B. JAYASURYA,

SENIOR PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31.05.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Bail Appl..No. 2441 of 2019 2

ORDER

This application is filed under Section 439 of the Cr.P.C.

2. The applicant is the accused in S.C.No.423 of 2018 on the

file of the Additional Sessions Judge-I, Manjeri. He is accused of committing filicide. The deceased is his daughter, who was aged 21 years at the time of incident.

3. The bare vital facts, which are to be noticed, are that the daughter of the applicant fell in love with a man, who was a member of the Scheduled Caste. She was working as a Dialysis Technician at the Medical College Hospital, Kozhikode. The applicant came to know about the relationship. He warned his daughter and restricted

her movements. Fed up with the threat and harassment, she eloped with her lover on 8.3.2018 and went off to Lucknow, where her lover was working as a Sepoy in the Indian Army. According to the prosecution, the applicant persuaded his daughter to come back home by assuring that her marriage would be solemnized on 23.03.2018. On reaching home, she realized that she was duped by

her own father. This led to a confrontation. It is alleged that on 22.03.2018, at about 4 p.m., the applicant attacked the deceased with a knife. She managed to escape and took refuge in a nearby house owned by one Abdul Latheef. The applicant followed her and entered Bail Appl..No. 2441 of 2019 3

the store room of the house where the deceased had entered, to save her life. He then inflicted a stab injury on her chest, which bisected her heart and lung. Though the girl was rushed to the KMCT Medical College Hospital, Mukkom, her life could not be saved. The applicant was arrested on the next day and he was remanded. The investigation was completed and final report was laid before the learned

Magistrate. The case has now been committed to the Court of Session, Manjeri.

4. Heard the learned counsel appearing for the applicant,

who submitted that the applicant has been in custody from 22.03.2018. His earlier applications were dismissed by this Court and the court below was ordered to expedite the proceedings. However,

the trial has not commenced till date. Referring to a recent judgment

of the Hon'ble Apex Court in Dataram Singh v. State of Uttar Pradesh [2018 (3) SCC 22], it is submitted that though the grant or denial of bail is entirely the discretion of the Judge, in the facts and circumstances of each case, the exercise of judicial discretion has been circumscribed by the decisions of the Apex Court as well as this Court. The jurisdiction must be exercised judiciously, in a humane manner and compassionately without being carried away by the severity of the allegations, submits the learned counsel. He would

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also place heavy reliance on the decision of the Apex Court in State of Kerala v. Raneef [(2011) 1 SCC 784] and it is argued that when under-trial prisoners are detained in jail custody for an indefinite period, Article 21 of the Constitution is violated. The long period of detention undergone by the applicant is highlighted by the learned counsel to persuade this Court to release him on stringent conditions.

5. The learned Senior Public Prosecutor has strenuously opposed the prayer. It is submitted that the applicant had murdered his own daughter in a most heinous manner and the incident was

witnessed by several persons. It is argued that if the applicant is released on bail, he would manage to influence the witnesses and tamper with the evidence. He would urge that the previous applications filed by the applicant were dismissed by this Court by detailed orders. The applicant has himself to be blamed for protracting the trial as he had sought for adjournment when the witnesses had

appeared for examination. There is no reason to take a different view now as there are no change in circumstances, contends the learned Senior Public Prosecutor.

6. I have considered the submissions advanced and have gone through the materials made available. Bail Appl..No. 2441 of 2019 5

7. The principles, which the Court must consider while granting or declining bail, have been stated by the Apex Court in a catena of cases. In *Prahlad Singh Bhati v. NCT, Delhi* [(2001) 4 SCC 280], it was held thus:

The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

8. The very same principles were reiterated in *State of U.P. v. Amarmani Tripathi* [(2005) 8 SCC 21] as well.

9. In the case on hand, there cannot be any doubt that the allegations against the applicant are extremely grave. This is a case in which the applicant had committed the murder of his own daughter. Several neighbours

and other witnesses, who had occasion

to witness the incident, have been cited by the prosecution. The apprehension that the applicant would manage to make the trial a farce, if he is released on bail, cannot be brushed aside. As held by the Apex Court, the reasonable possibility of the witnesses being tampered with and the possibility of securing the presence of the accused at the time of trial are valid considerations. The mere fact that the applicant has been in custody for some time may not be a reason to allow his application for bail. As held by the Apex Court in *Rajesh Ranjan Yadav v. CBI* (AIR 2007 SC 451), while Article 21 is of great importance, a balance must be struck between the right of liberty of the person accused of an offence and the interest of the society. No right can be absolute and reasonable restrictions can be placed on the exercise of the rights. The grant of bail due to prolonged incarceration cannot be said to be an absolute rule

because, the grounds of bail must depend upon the contextual facts

and circumstances.

10. In view of the contentions advanced by the learned counsel

appearing for the applicant that the trial has been delayed for no fault of the applicant, a report was called for from the learned Sessions Judge. It appears from the report that on 13.5.2019, on which day, Bail Appl..No. 2441 of 2019 7 the case was posted for trial, the applicant had sought for adjournment. The court below cannot be blamed for the delay. It has been undertaken by the learned Sessions Judge that he would be able to dispose of the case within a period of three months, if the accused co-operates.

11. In view of the above, I find no reason to allow this application and grant bail to the applicant. The applicant shall engage a counsel of his choice and co-operate with the trial. This application will stand dismissed. SD/- RAJA VIJAYARAGHAVAN V., JUDGE DSV/1.6.19 //TRUE COPY// P.A.TO JUDGE