

Martin Vs. State of Kerala

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Court : Kerala

Decided On : Jun-29-2004

Reported in : 2004CriLJ3766; 2004(2)KLT1037

Judge : J.B. Koshy and; K. Thankappan, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438 and 439

Appeal No. : Bail Appln. No. 2979 of 2003

Appellant : Martin

Respondent : State of Kerala

Advocate for Def. : K. Ravikumar, Public Prosecutor

Advocate for Pet/Ap. : Dinesh Mathew Muricken, Adv.

Judgement :

ORDER

J.B. Koshy, J.

1. This bail application was referred to by a learned single Judge disagreeing with the direction of another learned single Judge in Usman v. S.I. of Police (2003 (2) KLT 594). The above order was already overruled by a Division Bench of this Court in Balan v. State of Kerala (2003 (3) KLT 472). But direction No. iii in

Usman's case was not considered specifically by the Division Bench. The direction No. iii is as follows:

'iii. Every application for bail/anticipatory bail must be disposed of by the respective subordinate courts in the State on the date of receipt of the application itself ideally if moved with sufficient prior notice to the Prosecutor. At any rate all Courts including the Sessions Courts shall scrupulously ensure that bail applications are disposed of within the outer limit of three working days of their filing without fail.'

It is true that bail applications should be disposed of expeditiously and if a person applies for bail, it is the obligation of the Court to dispose of the same as expeditiously as possible. The direction No. iii can be followed as a general guideline only in the sense that, as far as possible, a bail application shall not be postponed for more than three days. But a hard and fast general rule cannot be made in a judicial order in the absence of a procedure prescribed by law regarding limitation. In a particular case specific direction can be issued considering the facts of each case.

2. In *Ramachandra Rao v. State of Karnataka* (2002 (2) KLT 189 (SC)) a Constitution Bench of the Supreme Court held as follows:

'28. Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts however liberally we may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible Courts can declare the law they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the Legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated in a given case or set of cases depending on facts brought to the notice of court. This is permissible for judiciary to do. But it may not, like

Legislature enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973.'

3. We are of the opinion that the above observations are applicable here also. From the facts of each case, High Court is empowered to give directions for disposal of a particular case and some guidelines can be prescribed including laying down of time limits or chalking out a time limit to follow. But an outer limit cannot be prescribed as a general direction. It can be prescribed only by law. There may be circumstances where Court may not be able to dispose of a bail application within three days, due to the facts of certain cases, absence of Public Prosecutor etc. In this particular case the application filed by the petitioner was dismissed by the learned Sessions Judge for the reason that it was not possible to grant bail since the case diary was not produced within three days of the filing of the application and hence the learned Sessions Judge was not able to know the stage of the investigation. It is submitted by the learned counsel for the petitioner that after the issuance of the order in Usman's case, many applications for bail were dismissed by the Sessions Courts as case diary was not produced or instructions were not received by the Public Prosecutor and therefore no decision can be taken by it on merits within the outer time limit of three days. A general direction can be issued stating that bail application can be disposed of as expeditiously as possible. Perhaps an ideal outer limit as far as procedure to be followed also can be suggested. But a positive direction prescribing an outer limit like legislative direction to be followed in all cases cannot be issued while considering the facts of a particular case. The reference is answered accordingly. With regard to the bail application in this matter already bail was granted on 18.12.2003. No further orders are necessary.

The Bail Application is disposed of accordingly.