

**The State Vs. Sadanadan**

**The State Vs. Sadanadan**

**SooperKanoon Citation :** [sooperkanoon.com/724617](http://sooperkanoon.com/724617)

**Court :** Kerala

**Decided On :** Dec-04-1981

**Reported in :** 1982CriLJ1117

**Judge :** P. Janaki Amma, J.

**Appellant :** The State

**Respondent :** Sadanadan

**Judgement :**

ORDER

**P. Janaki Amma, J.**

1. The respondent Sadanandan is the second accused in Crime No. 809 of 1981 of the Ernakulam Central Police Station, a case<sup>1</sup> registered in connection with the murder of one Majeendran. The prosecution case as disclosed from the records is that the respondent entertained enmity towards the deceased on account of business rivalry. He entered into an arrangement with the first accused Raj an, an employee under him for the murder of Majeendran and allowed him the use of a revolver, for which he had a licence. Raj an went to the house of Majeendran early in the morning of 9-10-1981, managed to get Majeendran at the front of the house and shot at him. Majeendran died shortly afterwards while he was awaiting treatment in the Medical Trust Hospital at Ernakulam-After the occurrence Raj an as also the respondent left Ernakulam and were absconding. The respondent later

on created documents so as to make it appear that he lost the revolver before the occurrence in the case. He was arrested from a hotel in Madras on 26-10-1981 and was in police custody till 16-11-1981 and has been in judicial custody thereafter. He moved for bail before the Sessions Judge, Ernakulam. The petition was opposed by the State mainly on the ground that the investigation was not over and that in case he be released on bail he would 'wield his influence to shelter the first accused and prevent his apprehension by the police. The learned Sessions Judge while disposing of the petition observed that though the respondent had been in custody ever since 26-10-1981 the prosecution had not been able to apprehend the first accused and that it would not be fair to the petitioner to keep him indefinitely in jail till such time as the investigating authorities find it possible to apprehend the first accused who is the actual assailant.

The Court therefore directed the release of the respondent on bail on or after 3-12-1981 on his executing a bond for Rs. 20,000 with two solvent sureties each for a like amount to the satisfaction of the Judicial Magistrate of the Second Class, Ernakulam, and on his surrendering the current passport held by the petitioner until further orders. The respondent was also directed not to leave the limits of the Cochin Corporation without prior sanction of the Court, that he should report before the Commissioner of Police every day until further orders and that he should not in any way interfere with the investigation of the case or influence the witnesses for the prosecution in any manner whatsoever.

2. The present petition was filed by the State to quash the above order granting bail. The main contention of the petitioner-State is that in the special circumstances of the case bail should not have been granted to the respondent. The prosecution is mainly relying on circumstantial evidence. Documents to prove the relevant circumstances are to be got at and verified by the investigating agency. More persons who are acquainted with the facts and circumstances of the case have to be questioned, the first accused who is at large has to be apprehended and the revolver used for the commission of the offence has to be recovered. The accused being a wealthy businessman having business connections in several places in and outside the State wields considerable influence and his being at large would impede and interfere with the course of investigation.

In the special circumstances of the case investigation could not be completed within the time allowed by the learned Sessions Judge. It is therefore only proper that the order granting bail is set aside.

3. In the counter-affidavit filed by the respondent he denied that he had any business association with Majeendran or any rivalry on account of financial transactions. He would aver that the first accused is a stranger to him and the revolver alleged to have been used for the murder never belonged to him. He had been in police custody till 16-11-1981 in violation of the provisions contained in Section 167 of Criminal P. C. and thereafter in judicial custody. In the absence of a definite averment that the respondent would not make himself available for the trial or that he would influence any witness or that he would tamper with any evidence or that he would misuse his freedom in case he is released on bail, no interference with the order granting bail is called for. 4. It is no doubt true that there is no case for the prosecution at present that the petitioner would not make himself available for trial; but it is not correct to say that the State had no case to that effect when the application for bail was opposed before the Court of Session. In fact the prosecution contended that the respondent has a passport and that he should not be permitted to use the same till the termination of the proceedings initiated against him. The main ground of objection was that the respondent being a very influential person his being at large would hamper the investigation of the case, the arrest of the first accused and the recovery of the weapon of offence.

5. Relying on the decision in Gurucharari Singh v. State (Delhi Administration, 1978 SCC (Cri) 41:1978 Cri LJ 129, it was argued on behalf of the respondent that the question of cancellation of bail Under Section 439(2) of Criminal P. C. is different from admission to bail Under Section 439(1) of Criminal P. C. Ordinarily the High Court will not exercise its discretion to interfere with an order of bail granted by the Sessions Judge. Reference was also made to the decision State v. Jagjit Singh : [1962]3SCR622 and State (Delhi Administration) v. Sanjay Gandhi, 1978 SCC (Cri) 223:1978 Cri LJ 952). In Gurucharan Singh v. State (Delhi Administration, 1978 SCO (Cri) 41:1978 Cri LJ 129, the Sessions Judge granted bail the propriety of that order was challenged before the High Court. The High Court set aside the order. The decision of the High Court was confirmed by the

Supreme Court. In State v. Jagjit Singh : [1962]3SCR622 , a case arising under the Official Secrets Act, the High Court granted bail to the accused. The Supreme Court in appeal against the order held that the High Court proceeded on certain wrong assumptions. The Supreme Court observed that the High Court (at p. 137 of Cri LJ)-

should then have taken into account the various considerations, such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State, and similar other considerations which arise when a court is asked for bail in a non-bailable offence.

The above decision was followed in Gurucharan Singh v. State (Delhi Administration, 1978 SCC (Cri) 41 : 1978 Cri LJ 129, The Supreme Court stated in that case that.

there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.

6. In State (Delhi Administration) v. Sanjay Gandhi, 1978 SCC (Cri) 223:1978 Cri LJ 952, the respondent was granted anticipatory, bail Under Section 438 of the Criminal P. C The prosecution later on moved the High Court for cancellation of bail on the, ground of tampering with witnesses. The High Court did not allow the petition. The matter was taken up in appeal before the Supreme Court. The Supreme Court observed (at p. 957 of Cri LJ):

Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.

7. In the above case the Supreme Court held that there was attempted tampering of the evidence and directed that the bail be cancelled, that the accused be kept in custody for a period of one month and be released on fresh bail after the period of one month.

8. The above decisions only lay down the broad principles for granting and cancelling bail. Ultimately each case has to be judged on its own merits. In the instant case, the main objection for the release of the appellant is that his being at large would hamper the investigation of the case, the ultimate fate of which is based on circumstantial evidence. Ordinarily the release of one accused on bail need not necessarily stand in the way of apprehending another. But if as is contended by the prosecution in this case, the first accused committed the offence at the behest of the respondent and with the respondent's revolver, the respondent will in the usual course be interested in shielding the first accused and in preventing recovery of the weapon. The apprehension is that he may do so utilising the network of business centres that he has. It must be this consideration that weighed the learned Sessions Judge to keep the respondent in custody till 3-12-1981'.

9. Although the State has challenged in this petition the granting of bail to the respondent, at the time of hearing the prayer was confined to postponing the release of the respondent on bail by three weeks in order to enable the prosecution to complete the investigation. It was contended that the time allowed was found to be insufficient. It was also submitted during the course of argument that subsequent to the order of the learned Sessions Judge, more materials have been received with the use of which it is expected, that the investigation could be successfully brought to an end and if in the meanwhile the respondent is to be released that may prevent the course of investigation. I think that the submission deserves consideration. While the Court is obliged to see that the liberty of an individual is not unduly curtailed, it is equally the duty of the Court to see that proper facilities are made available for the working of the investigating machinery in a case where a serious offence of murder is involved. In deciding whether the release should be postponed by a definite period regard must be had to the fact that a person accused of an offence of murder or abetment thereof is not entitled

to be released on bail, if there appear reasonable grounds for believing that he has been guilty of the offence alleged.

The proper time for forming an opinion as to whether there are reasonable grounds is completion of the investigation. No doubt there may be cases where the Court would be in a position to form an opinion even at an earlier stage, in which case it is open to the Court to grant bail before the investigation is over. The learned Sessions Judge has not mentioned anything about the merits of the case or whether the case falls or does not fall under the first category; but the fact that he postponed the actual release of the respondent to a future date has its own significance. I think that in the nature of the case and in view of the fact that the State does not press the prayer for cancellation of the bail granted, the limited request that the actual release of the respondent should be postponed to a future date to facilitate proper investigation of the case should be allowed. It may be that such a relief may not strictly fall Under Section 439(2) of the Criminal P. C. but this Court can pass appropriate orders under its inherent powers to secure the ends of justice.

10. I confirm the order granting bail, but direct that the respondent need be released only on or after 21-12-1981, on his executing the bond as stipulated by the Court of Session-

11. The Sessions Judge in. his order has directed the Magistrate to see that the current passport held by the petitioner is surrendered and that the same should be kept in the custody of his Court until further orders. At the time of hearing it was represented on behalf of the respondent that he does not possess any passport and therefore that portion of the order of the Sessions Judge requires modification. This is conceded by the Public Prosecutor. Therefore, the direction in the order of the Sessions Judge regarding surrender of passport will stand deleted. The other conditions will stand.