

**E. Satheesh Kumar Vs. Malabar Devaswam Board and Others**

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**Court :** Kerala

**Decided On :** Oct-24-2011

**Judge :** K.T. Sankaran

**Appeal No. :** B.Appln.No.8187 of 2011

**Appellant :** E. Satheesh Kumar

**Respondent :** Malabar Devaswam Board and Others

**Judgement :**

1. This is an application for bail under S.439 of the Code of Criminal Procedure, filed by accused Nos.1 to 7 in Crime No. 490 of 2011 of Chevayoor Police Station, Kozhikode District.

2. The offences alleged against the accused are under S.143, S.147, S.148, S.332, S.333, S.326, S.506(i), S.307 read with S.149 of the Indian Penal Code and S.3(2)(e) of the Prevention of Damage to Public Property Act (hereinafter referred to as the PDPP Act).

3. The prosecution case is the following: On 20/09/2011 while the Sub Inspector of Police and two civil police officers were on law and order duty, at about 5.20 P.M., one Sudeep was arrested for drunken rash driving of a motor bike. Sudeep was taken for medical examination. While the police officers were returning from the hospital, the police jeep had to be stopped at Kakkoti Bazar due to a traffic block. At that time, about 25 persons belonging to DYFI rushed towards the police party

shouting "kill those dogs" and attacked them with stones, bricks and sticks. One of the police officers sustained grievous injuries and others sustained minor injuries. Sudeep, who was in the police jeep was also assaulted by the accused persons. The DYFI activists had conducted a protest march at Kakkoti, protesting against the police lathi charge which occurred at Kozhikode on the same day morning. The DYFI activists, while returning after the protest march, committed the offence as mentioned above. They also destroyed the police jeep. The loss to the Government on that account was assessed at Rs. 18,200/- by the Assistant Motor Vehicles Inspector, Kozhikode.

4. Accused No.1 was arrested on 21/09/2011 and the others were arrested on 26/09/2011.

5. Sri. P. V. Kunhikrishnan, the learned counsel for the petitioners submitted that the petitioners are entitled to be released on bail. The counsel also submitted that the view taken in Hemanth Kumar and Others v. Sub Inspector of Police, 2011 (4) KHC 89 : 2011 (4) KLT 288 : 2011 (2) KLD 701 : 2011 (4) KLJ 296 : ILR 2011 (4) Ker. 261 that where public property is destroyed, the accused should be directed to deposit the amount of loss or even more as a condition for granting bail to them, requires re - consideration. The counsel submitted that the decision in Hemanth Kumar's case is against the dictum laid down in several decisions of the Supreme Court, Kerala High Court and other High Courts.

6. In Hemanth Kumar's case, I had occasion to hold thus:

"Destruction of public property is to be viewed very seriously. Very often, under the guise of strikes, hartals and other political adventures, public properties are being destroyed unmindful of the consequences. Public property means the property belonging to the public. Every citizen has a right in the public property. It cannot be destroyed by anybody under the guise of strike or protest, whatever may be the reason for the strike or protest. Even if the strike or protest is for a genuine cause, nobody can say that destruction of public property would be part of that genuine cause. There can be no justification for destruction of public property, whatever may be the cause sought to be espoused for the same.

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8. I am of the view that in cases where public property is destroyed, the value of the same or even more should be directed to be deposited by the accused as a condition for granting bail to them. Otherwise, the loss sustained to the State would not be realized at all. Courts cannot be mute spectators to the wanton destruction of public property. Nobody should be allowed to destroy public property and claim success of the strikes on the basis of the quantum of loss sustained to the State. It is easy to destroy; but it is not so easy to make.

9. If the accused are found not guilty and they are accordingly acquitted, they would be entitled to get refund of the amount deposited by them. If the Court comes to the conclusion that the accused are liable to pay any fine, the amount in deposit can be utilized for payment of fine."

7. Sri. P. V. Kunhikrishnan, the learned counsel for the petitioners submitted that as a general principle of law, the above view cannot be taken. There may be cases where serious offences are not involved and in such cases, the said principle cannot be adopted at all. He also submitted that deposit of money cannot be ordered as a condition for granting bail, since it would have the effect of curtailing personal liberty of the individual. The counsel relied on the decisions in *Moti Ram and Others v. State of Madhya Pradesh*, 1978 KHC 178 : AIR 1978 SC 1594 : 1978 KLT 747 : 1978 (4) SCC 47 : 1978 SCC (Cri) 485 : 1978 Cri LJ 1703 *Kesab Narayan Banerjee and Another v. The State of Bihar*, 1985 KHC 795 : AIR 1985 SC 1666 *TGN Kumar v. State of Kerala*, 2011 (1) KHC 142 : 2011 (1) KLT 362 (SC) : 2011 (1) KLD 130 : ILR 2011 (1) Ker. 321 : 2011 (2) SCC 772 : AIR 2011 SC 708 : 2011 (1) KLJ 559 *Syamkumar v. State of Kerala*, 2010 KHC 6262 : 2010 (4) KLT 405 *Jomon v. State of Kerala*, 2010 (2) KHC 264 : 2010 (2) KLT 371. *Kaleem alias Kaleem Pasha v. State*, 2003 KHC 2076 : 2003 Cri LJ 353 (Kar.) and *Alluvdin v. Inspector of Police*, 2001 KHC 2354 : 2001 Cri LJ 2672 (Mad.).

8. Sri. Asaf Ali, the learned State Prosecutor supported the decision in *Hemanth Kumar's case*. He relied on the decision of the Supreme Court in *In Re Destruction of Public and Private Properties v. State of A.P.*, 2009 (2) KHC 374 : 2009 (5) SCC 212 : 2009 (2) KLT 552 (SC) : 2009 (1) KLD 664 : AIR 2009 SC 2266 : 2009 Cri LJ

2807 : 2009 (5) SCALE 638 and of the Delhi High Court in Sunil Sharma and Others v. State, 1993 Cri LJ 3628.

9. In Moti Ram and Others v. State of Madhya Pradesh, 1978 KHC 178 : AIR 1978 SC 1594 : 1978 KLT 747 : 1978 (4) SCC 47 : 1978 SCC (Cri) 485 : 1978 Cri LJ 1703 the accused, a mason, was directed to furnish security for Rs. 10,000/- as a condition for bail. The Magistrate also directed that the sureties shall be from the home District of the accused. In that context, it was held by the Supreme Court thus:

"It shocks one's conscience to ask a mason like the petitioner to furnish sureties for Rs. 10,000/-. The magistrate must be given the benefit of doubt for not fully appreciating that our Constitution, enacted by "We, the People of India", is meant for the butcher, the baker and the candle - stick maker - shall we add, the bonded labour and pavement dweller."

10. In Kesab Narayan Banerjee and Another v. The State of Bihar, 1985 KHC 795: AIR 1985 SC 1666 it was held that the direction to deposit Rupees One lakh as a condition for granting bail is "excessively onerous."

11. In Syamkumar v. State of Kerala, 2010 KHC 6262 : 2010 (4) KLT 405 a learned Single Judge of this Court held that the condition for furnishing cash security deposit of Rs. 20,000/- as a condition for bail was unjustified. In Jomon v. State of Kerala, 2010 (2) KHC 264 : 2010 (2) KLT 371 the same learned Single Judge held that the direction to furnish cash security of Rs. 25,000/- was illegal. In that case, the offence involved was under S.393 read with S.34 of the Indian Penal Code.

12. Kaleem alias Kaleem Pasha v. State, 2003 KHC 2076 : 2003 Cri LJ 353 (Kar.) was a case where offences under S.363 and S.392 were involved. The accused were directed to deposit Rs. 10,000/- in addition to the execution of a bond for Rs. 50,000/- . Relying on AIR 1978 SC 1594, 1978 KHC 178 : AIR 1978 SC 1594 : 1978 KLT 747 : 1978 (4) SCC 47 : 1978 SCC (Cri) 485 : 1978 Cri LJ 1703 [Keshab Narayan Banerjee and Another v. State of Bihar, 1985 KHC 795], the Karnataka High Court held that the direction to make cash deposit was illegal.

13. In *Alluvdin v. Inspector of Police*, 2001 KHC 2354 : 2001 Cri LJ 2672 (Mad.) in respect of an offence under S.457 and S.380 of the Indian Penal Code, the direction to make cash deposit as a condition for bail, was held to be illegal. It was also held that S.441 CrI PC "does not speak about deposit of any cash security."

14. The learned counsel for the petitioners cited the decision in *TGN Kumar v. State of Kerala*, 2011 (1) KHC 142 : 2011 (1) KLT 362 (SC) : 2011 (1) KLD 130 : ILR 2011 (1) Ker. 321 : 2011 (2) SCC 772 : AIR 2011 SC 708 : 2011 (1) KLJ 559 in support of the contention that the power under S.482 of the Code of Criminal Procedure or Art.227 of the Constitution cannot be exercised to direct the subordinate Courts to pass orders in a particular manner. The Supreme Court held:

"Similarly, while it is true that the power of superintendence conferred on the High Court under Art.227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority. In any event, the power of superintendence cannot be exercised to influence the subordinate judiciary to pass any order or judgment in a particular manner."

15. A three Judge Bench of the Supreme Court considered the various aspects relating to the offence of destruction of public property in *In Re Destruction of Public and Private Properties v. State of Andhra Pradesh*, 2009 (2) KHC 374 : 2009 (5) SCC 212 : 2009 (2) KLT 552 (SC) : 2009 (1) KLD 664 : AIR 2009 SC 2266 : 2009 Cri LJ 2807 : 2009 (5) SCALE 638. In that case, taking serious note of large scale destruction of public and private properties in the name of agitations, bandhs, hartals and the like, the Supreme Court initiated suo motu proceedings. Two Committees, one headed by Justice K. T. Thomas (former Judge of Supreme Court) and the other headed by Senior Advocate Sri. F. S. Nariman were constituted by the Supreme Court. Justice K. T. Thomas Committee made the following among other recommendations:

"Next we considered how far the leaders of the organizations can also be caught and brought to trial, when public property is damaged in the direct actions called at the behest of such organizations. Destruction of public property has become so

rampant during such direct actions called by organizations. In almost all such cases the top leaders of such organisations who really instigate such direct actions will keep themselves in the background and only the ordinary or common members or grass root level followers of the organisation would directly participate in such direct actions and they alone would be vulnerable to prosecution proceedings. In many such cases, the leaders would really be the main offenders being the abettors of the crime. If they are not caught in the dragnet and allowed to be immune from prosecution proceedings, such direct actions would continue unabated, if not further escalated, and will remain a constant or recurring affair.

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The Committee felt that offenders arrested for damaging public property shall be subjected to a still more stringent provision for securing bail. The discretion of the Court in granting bail to such persons should be restricted to cases where the Court feels that there are reasonable grounds to presume that he is not guilty of the offence. This is in tune with S.437 of the Code of Criminal Procedure, 1973 and certain other modern Criminal Law Statutes. So we recommend that S.5 may be amended for carrying out the above restriction.

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However, we felt that apart from the penalty of imprisonment the Court should be empowered to impose a fine which is equivalent to the market value of the property damaged on the day of the incident. In default of payment of fine, the offender shall undergo imprisonment for a further period which shall be sufficient enough to deter him from opting in favour of the alternative imprisonment."

16. The Supreme Court accepted the recommendations of Justice K. T. Thomas Committee, in the following words: "The recommendations according to us are wholesome and need to be accepted." (emphasis supplied). The Supreme Court also issued several guidelines to be adopted to assess damages, in the absence of legislation. The guidelines, inter alia, provides for suo motu action by the High Court concerned, appointment of Claims Commissioner, fixing of liability on the actual perpetrators of the crime as well as on the organisers of the event, and

awarding exemplary damages not greater than twice the amount of damages liable to be paid. The Supreme Court also held thus:

"The recommendations of Justice K. T. Thomas Committee and Mr. F. S. Nariman Committee above which have the approval of this Court shall immediately become operative. They shall be operative as guidelines." (emphasis supplied)

17. In *Sunil Sharma and Others v. State*, 1993 Cri LJ 3628 the Delhi High Court, with modification, approved the direction to the accused to deposit Rs.10,000/- as a condition for bail, in a case involving offence under S.406 and S.498 - A of the Indian Penal Code.

18. The decisions cited by the learned counsel for the petitioners do not relate to offences relating to destruction of public property. The said decisions relate to offences affecting individuals. The offence of destruction of public property is to be viewed differently. The facts of the cases in the decisions cited by the learned counsel for the Petitioners are quite distinct and different from the facts of the present case. Moreover, a three Judge Bench decision of the Supreme Court in *In Re Destruction of Public and Private Properties v. State of Andhra Pradesh*, 2009 (2) KLT 552 : 2009 (5) SCC 212, 2009 (2) KHC 374 : AIR 2009 SC 2266 : 2009 (1) KLD 664 : 2009 Cri LJ 2807 : 2009 (5) SCALE 638 dealing with the subject of destruction of public and private property took a view different from the view taken in *Moti Ram and Others v. State of Madhya Pradesh*, 1978 KHC 178 : AIR 1978 SC 1594 : 1978 KLT 747 : 1978 (4) SCC 47 : 1978 SCC (Cri) 485 : 1978 Cri LJ 1703. *Kesab Narayan Banerjee and Another v. The State of Bihar*, 1985 KHC 795 : AIR 1985 SC 1666.

19. Sri. P. V. Kunhikrishnan, the learned counsel for the petitioners contended that High Court or Court of Session while granting bail under S.439 of the Code of Criminal Procedure, and the Courts other than the High Court or Court of Session while granting bail under S.437, cannot impose a condition other than the condition under sub-section (3) of S.437 CrI PC. It is submitted that such conditions do not include a condition for deposit of any amount.

20. Sub Section (3) of S.437 reads as follows:

"(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the Court shall impose the conditions, -

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary. (emphasis supplied)"

21. The relevant part of S.439 CrI PC is as follows: -

"439. Special powers of High Court or Court of Session regarding bail. - (1) A High Court or Court of Session may direct -

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of S.437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

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S.439 of the Code of Criminal Procedure does not restrict the power of the High Court or Court of Session to impose a condition other than the conditions which could be imposed under sub-section (3) of S.437. What S.439 provides is that the High Court or Court of Session may impose any condition which it considers necessary. But imposing such condition should be for the purposes mentioned in sub-section (3) of S.437. In other words, for the purposes mentioned in S.437(3),

any condition can be imposed by the High Court or Court of Session while allowing an application for bail under S.439. S.439 does not say that the High Court or Court of Session can impose only those conditions which could be imposed under S.437(3).

22. Under S.437 of the Code of Criminal Procedure, a Court other than the High Court or Court of Session may impose, in the interests of justice, such other conditions as it considers necessary. This is in addition to the conditions mentioned in Clauses (a) to (c) therein. The words "and may also impose" make it clear that the Court has power not only to impose the conditions as mentioned in Clauses (a) to (c), but it has power to impose other conditions as well.

23. Sri. Kunhikrishnan, the learned counsel for the Petitioners also raised the following contentions: (1) The offence under the PDPP Act does not attract sub-section (3) of S.437 and therefore the conditions mentioned therein cannot be imposed while granting bail; (2) The Court cannot, therefore, impose a condition for deposit of any amount, even if the offences under the PDPP Act and the offences of the nature mentioned in sub-section (3) of S.437 are alleged.

24. The PDPP Act was enacted with a view to curb acts of vandalism and damage to public property, including destruction and damage caused during riots and public commotion. The PDPP Act is an Act to provide for prevention of damage to public property and for the matters connected therewith. The Act defines "public property". S.2 (a) of the PDPP Act provides that unless the context otherwise requires, "mischief" shall have the same meaning as in S.425 of the Indian Penal Code. Chapter XVII of the Indian Penal Code deals with offences against property. S.425 to 440 of the Indian Penal Code deal with "mischief". Punishment under these Sections vary from imprisonment for a term which may extend to three months to a term which may extend to ten years. Irrespective of the term of imprisonment as punishment, all the offences under Chapter XVII of the IPC are covered by S.437 (3) CrI PC S.5 of the PDPP Act provides that "no person accused or convicted of an offence punishable under S.3 or 4 shall, if in custody, be released on bail or on his own bond unless the prosecution has been given an opportunity to oppose the application for such release. The fourth proviso to S.437

CrPc provides for opportunity of hearing to the Public Prosecutor only if the offence is punishable with death, imprisonment for life, or imprisonment for seven years or more. S.6 of the PDPP Act states that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. The scheme of the PDPP Act when considered alongwith S.437 of the Code of Criminal Procedure, it would be clear that in the matter of granting bail, a rigorous approach is contemplated when the offences alleged are under the PDPP Act. Such rigorous approach is required in the matter of imposing conditions for granting bail also. A condition for deposit of the loss sustained to the Government as a condition for granting bail to the accused would be justified under S.437 and S.439 of the Code of Criminal Procedure. The decision of the Supreme Court in *In Re Destruction of Public and Private Properties v. State of Andhra Pradesh* 2009 (2) KLT 552 : 2009 (5) SCC 212, 2009 (2) KHC 374 : AIR 2009 SC 2266 : 2009 (1) KLD 664 : 2009 Cri LJ 2807 : 2009 (5) SCALE 638 would also support such a view. For the reasons mentioned above, I am not inclined to accept the contention of the Petitioners that the decision in *Hemanth Kumar and Others v. Sub Inspector of Police*, 2011 (4) KHC 89 : 2011 (4) KLT 288 : 2011 (2) KLD 701 : 2011 (4) KLJ 296 : ILR 2011 (4) Ker. 261 requires reconsideration.

25. As rightly pointed out by the State Prosecutor, destruction of public property cannot always be compensated in terms of money. For example, if the documents kept in a Village Office, Taluk Office, Collectorate or Surveyor's Office are destroyed, the public would be put to untold misery. Even the Civil Courts would find it difficult to decide the civil disputes between parties if such documents are destroyed. The after effect of such destruction would last even for several decades. The actual loss caused by such destruction could not be estimated in terms of money. A rigorous approach is required in the matter of granting bail and also in the matter of imposing conditions while granting bail, in the cases involving destruction of public property. Otherwise, the object sought to be achieved by the PDPP Act would become illusory.

26. Taking into account the facts and circumstances of the case, the duration of judicial custody undergone by the petitioners and the present stage of investigation, I am of the view that bail can be granted to the petitioners on

stringent conditions.

27. The petitioners shall be released on bail on their executing bond for Rs. 25,000/- (Rupees twenty five thousand only) each with two solvent sureties for the like amount to the satisfaction of the Judicial Magistrate of the First Class I, Kozhikode, subject to the following conditions:

- a) The petitioners shall together deposit a sum of Rs. 25,000/- (Rupees Twenty five thousand only ) before the Court of the Judicial Magistrate of the First Class I, Kozhikode. The petitioners shall be released on bail only on such deposit. If the petitioners were to be acquitted finding that they are not guilty, they would be entitled to get refund of the amount. Otherwise, the amount would be at the disposal of the Court trying the case;
- b) The petitioners shall report before the investigating officer between 9 A.M. and 11 A.M. on alternate Sundays, till the final report is filed or until further orders;
- c) The petitioners shall appear before the investigating officer for interrogation as and when required;
- d) The petitioners shall not try to influence the prosecution witnesses or tamper with the evidence;
- e) The petitioners shall not commit any offence or indulge in any prejudicial activity while on bail;
- f) The petitioners shall co - operate with the investigating officer in the matter of investigation;
- g) In case of breach of any of the conditions mentioned above, the bail shall be liable to be cancelled.

The Bail Application is allowed as above.

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