

(2024) 11 KL CK 0048
In the High Court Of Kerala
Case No : Bail Application No. 9244 Of 2024

Aravind

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 25-11-2024

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 483
Bharatiya Nyaya Sanhita, 2023 — Section 3(5), 105

Citation : (2024) 11 KL CK 0048

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : K.K.Dheerendrakrishnan, N.P.Asha, Seetha S.

Final Decision : Allowed

Judgement

C.S.Dias, J

1. The application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS', for short) by the first accused in Crime No.474/2024 of the Maranalloor Police Station, Thiruvananthapuram, which is registered against two accused persons for allegedly committing the offence punishable under Section 105 r/w Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 (BNS). The petitioner was remanded to judicial custody on 13.10.2024.

2.The concise case of the prosecution is that; the first accused had taken a poultry farm on lease and sub-let the same to the second accused. The first accused had installed an electric fence around the poultry farm, to prevent anyone from entering the same, with the full knowledge that the electric fence would endanger human life. The second accused took the poultry farm from the first accused on 01.01.2024 on an oral on an oral sub-lease. On 12.10.2024, the mother of the de facto complainant named Valsamma (deceased) touched the electric fence and got electrocuted. She lost her life then and there at the spot. Thus, the accused have committed the above offences.

3. Heard; Sri.K.K.Dheerendrakrishnan, the learned counsel appearing for the petitioner and Smt.Seetha S., the learned Senior Public Prosecutor.

4. The learned counsel appearing for the petitioner submitted that the petitioner is innocent of the accusations levelled against him. Even as per the prosecution case, the petitioner was not running the poultry farm because he had sub-let the farm to the second accused, who is the person who allegedly electrified the fence. The petitioner had no control over the poultry farm on the uneventful day. Therefore, by no stretch of imagination can the offence under Section 105 of the BNS be attributed against the petitioner. In any given case, the petitioner has been in judicial custody for the last 42 days, the investigation in the case is practically complete and the recovery has been effected. Furthermore, the petitioner does not have any criminal antecedents. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the application. She submitted that the investigation is in progress. She also stated that the petitioner was conscious of the fact that the electric fence would endanger human life. The petitioner was managing the poultry farm. It is only to escape from his criminal liability that he is stating that it was the second accused who was running the poultry farm. If the petitioner is enlarged on bail, there is every likelihood of him intimidating the witnesses and tampering with evidence. Hence, the application may be dismissed.

6. The prosecution case is that, the petitioner and the second accused had installed an electric fence around the poultry farm and the deceased touched the electric fence and she got electrocuted.

7. On a careful consideration of the materials on record, it can be gathered that even going by the prosecution allegation the petitioner had given the poultry farm to the second accused on oral lease on 1.1.2024. The alleged incident took place on 12.10.2024. Whether the poultry farm was under the management of the petitioner is a matter to be investigated and ultimately decided after trial. The fact remains that the petitioner has been in judicial custody for the last 42 days, the investigation in the case is practically complete and the recovery has been effected. The petitioner does not have any criminal antecedents.

8. Recently, in *Manish Sisodia v. Directorate of Enforcement* [2024 INSC 595] the Honourable Supreme Court has observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From its experience, it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is the rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, the Honourable Supreme Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts recognize the principle that "bail is the rule and jail is an exception."

9. On an overall consideration of the facts, the rival submissions made across the Bar and the materials placed on record, particularly on considering the fact that the petitioner has been in judicial custody for the last 42 days, the investigation in the case is complete and the recovery has been effected, and furthermore, the petitioner does not have any criminal antecedents, I am of the view that the petitioner's further detention is not necessary. Hence, I am inclined to allow the bail application.

In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

(i) The petitioner shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is laid. He shall also appear before the Investigating Officer as and when required;

(ii) The petitioner shall not directly or indirectly make any inducement, threat or procure 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 in any manner, whatsoever;

(iii) The petitioner shall not commit any offence while he is on bail;

(iv) The petitioner shall surrender his passport, if any, before the jurisdictional court at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the said court on the date of execution of the bond;

(v) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

(vi) Applications for deletion/modification of the bail conditions shall be moved and entertained by the jurisdictional court.

(vii) Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in *Sushila Aggarwal v. State (NCT of Delhi) and Another* [2020 (1) KHC 663].