

(2023) 09 KL CK 0193
In the High Court Of Kerala
Case No : Bail Application No. 7347 Of 2023

Greeshma @ Sreekutty

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 25-09-2023

Acts Referred:

Constitution of India, 1950 — Article 21
Code of Criminal Procedure, 1973 — Section 437, 439
Indian Penal Code, 1860 — Section 34, 201, 203, 302, 328, 364

Citation : (2023) 09 KL CK 0193

Hon'ble Judges : Mohammed Nias C.P., J

Bench : Single Bench

Advocate : Sasthamangalam S. Ajithkumar, Grashious Kuriakose

Final Decision : Dismissed

Judgement

Mohammed Nias C.P., J

1. This application is filed under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail.

2. The prosecution allegations, in short, are as follows:

The first accused had been in love with the deceased Sharon Raj, and they travelled to many places and took photographs. They got secretly married at Vettukadu church, and the first accused started wearing the mangalsutra (thali) tied by Sharon Raj. Thereafter, some issues cropped up between them in the month of February, and the marriage of the first accused was fixed with another person. Even after fixing the engagement on 05.02.2022, the first accused and deceased again contacted each other, went to several places and continued their relationship. When the date of marriage was fixed between the first accused and another man, the first accused wanted to get rid of the deceased at any cost. She told the deceased to end the relationship, but he refused to do so and told her that he would publish the mobile phone captured images with the first

accused and create problems. She contacted the deceased from her phone when the 2nd and 3rd accused were not in the house and invited him to her house. After inviting him to her house, she prepared an ayurvedic decoction (kashayam) using an ayurvedic powder that her mother kept as medicine for knee pain. The first accused prepared a decoction laced with pesticide, namely KAPIQ and hid it beneath her bed. When the deceased came to her house, she demanded him to end the relationship with her, but he refused the demand made by the first accused.

3. The first accused, knowing that her prospects would be better if she was able to get rid of him, decided to kill him. She again acted in a lovable manner and gave the ayurvedic decoction laced with pesticide and instigated him to drink the said ayurvedic decoction and thereafter gave fruity to avoid the bitter taste of said ayurvedic mixture, stating it as a 'juice challenge'. After consuming the said ayurvedic mixture, the deceased vomited in the bathroom of the first accused's residence. Subsequently, he went to his house on a motorcycle ridden by his friend. After reaching home, he again vomited, and his condition became worse. He was first admitted at Parassala Government Hospital and thereafter referred to Medical College, Thiruvananthapuram. After being discharged from Thiruvananthapuram Medical College, he returned to his home but again vomited and was admitted to a clinic situated at Valiyathura. When the condition of Sharon Raj became worse, he was referred to Thiruvananthapuram Fort Hospital. On 17.10.2022, he was again referred to Thiruvananthapuram Medical College Hospital and continued his treatment till 25.10.2022. On 25.10.2022 at 5.55 pm, Sharon Raj succumbed to serious damages sustained to his internal organs such as kidney, liver and lungs on account of the impact of Kapiq herbicide mixed in the ayurvedic decoction given to him by the 1st accused. After getting information regarding the death of Sharon Raj, the 2nd and 3rd accused took the pesticide bottle used for the commission of the offence and threw it onto the northern side of their property. Thereafter, 3rd accused, with the aid of 1st and 2nd accused, took the pesticide bottle from the said place, which was concealed in a place at Ramavarmanchira. Thus the accused Nos. 1 to 3, in furtherance of their common intention, committed the murder of Sharon Raj and thereafter caused the ayurveda and pesticide bottles used for the commission of the offence to disappear with an intention to screen them from the legal punishment and thus alleged to have committed the offences punishable under Sections 364, 328, 302, 201 and 203 r/w 34 of the IPC.

4. The learned counsel for the petitioner, Sri. Sasthamangalam S. Ajithkumar strenuously contended that the alleged poisoning incident occurred on 17.10.2022, and the victim succumbed to death on 25.10.2022. Though the petitioner was remanded to judicial custody on 01.11.2022, even before that, she was detained. He argues that all along the petitioner had co-operated with the investigation. He also argues that the dying declaration of the victim, which is relevant, never pointed fingers at the petitioner and that there is more than a substantial defence to urge in the trial. He argues that the charge sheet has

already been filed on 25.01.2023. On an earlier occasion, the trial court held that a custody trial has to be conducted by allowing the request of the prosecution through an application. However, the same was set aside in CrI. M.C.No.4359/2023 dated 18.8.2023 by this Court, granting the liberty to file an application in the bail application again and the same was done. The learned Judge again dismissed the bail application, holding the very same reason, namely that a custody trial is required notwithstanding the orders of this Court in CrI. M.C.No.4359/2023. He argues that since the final report is already filed, there is no reason why the petitioner should be doubted to interfere with the investigation. He also argues that there is no previous antecedent against the petitioner and that the petitioner is willing to abide by any conditions to be imposed by this Court. He also argues that the benefit of proviso to Section 437 be extended to the petitioner, being a woman.

5. The learned Senior Counsel and the Additional Director General of Prosecution, Sri. Gracious Kuriakose, opposed the bail application, contending that this is a case where a planned, gruesome murder has been committed by the petitioner. There were also attempts to fabricate evidence to make it appear that it was a case of suicide. He also argues that the accused had attempted suicide while in custody and that the motive behind the crime and the preparation disentitles the petitioner from being enlarged on bail. He argues that the Sessions Court had extensively considered all these while considering the bail application filed as directed by this Court.

6. The following facts emerge when evaluating and considering the rival submissions. The prosecution does not dispute that the petitioner had co-operated with the investigation all along, that the dying declaration of the victim produced along with the CrI. M.A.No.3/2023 also does not speak anything against the accused, that almost all witnesses are either the relatives of the victim or official witnesses, that the accused is a first-time offender, and that the chance of the petitioner adversely interfering with the trial is very remote. That apart, as rightly argued by the learned counsel for the petitioner, the argument that the petitioner may commit suicide if enlarged on bail and thus frustrate the trial cannot be taken as a reason at all, as it would then be applicable to every criminal case. I also cannot lose sight of the fact that the accused is a woman aged 22, in the light of the proviso to S.437 Cr.P.C. I also note that the accused has been in custody since 31.10.2022, and the prosecution raises no apprehension that if released on bail, the petitioner is likely to abscond.

7. It is trite that there is a presumption of innocence, meaning a person is believed to be innocent until found guilty. It is also to be borne in mind that the principle is that bail is the rule and jail is the exception, which is the touchstone of Article 21 of the Constitution of India. After the charge sheet is filed, a strong case must be made for placing a person in judicial custody. This is more so when the accused participated in the investigation without any complaint being raised by the investigating officer. Given the above factors, I feel that denying bail to

the accused cannot be right on the facts and circumstances of this case, despite the serious nature of the accusations against the petitioner. Right to bail is not to be denied merely because of the sentiments of the community being against the accused, nor can bail be withheld as a punishment, pending trial. Accordingly, this application is allowed, and the petitioner is granted bail subject to the following conditions:-

- i. The petitioner shall execute a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional court;
- ii. The petitioner shall appear before the trial court on all posting dates without fail, except when specifically exempted by the trial court;
- iii. The petitioner shall furnish her present address along with her mobile number to the court as well as to the investigating officer.
- iv. Petitioner shall not attempt to interfere with the trial in any manner or to influence any witness in the aforementioned crime;
- v. The petitioner shall not be involved in any other crime while on bail.

If any of the aforesaid conditions are violated, the investigating officer concerned may file an application before the jurisdictional court for cancellation of bail.