
(1983) 06 KL CK 0019
In the High Court Of Kerala

Iyyu and Another

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-06-1983

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 191

Citation : (1984) CriLJ 494

Hon'ble Judges : Sukumaran, J

Bench : Single Bench

Judgement

Sukumaran, J.—Accused Nos. 2 and 3 in Crime No. 67 of 1983 of the Fort Cochin Police Station are the petitioners. They moved but without success. a bail application before the Judicial Second Class Magistrate, Cochin. The reason for rejection was technical. The court said that the offences alleged against them were exclusively triable by the Sessions Court.

2. The petitioners persevered in their attempt by moving Crl. M. P. No. 296 of 1983 for bail. before the Sessions Court.

3. The 1st accused in Crime No. 67 of 1983 and also filed a bail application, Crl. M. P. 278 of 1983. before that court. The court passed a detailed order therein: the bail application was rejected thereunder.

4. Crl. M. P. No. 296 of 1983 was considered alone" with Crl. M. P. No. 278 of 1983. Both petitions were rejected by separate orders passed on 9-6-1983. The learned Sessions Judge observed that the reasons for declining bail in Crl. M. P. No. 278 of 1983 equally apply to the petitioners" case as well" and concluded the order with the observation:

In view of the considered order passed in Crl. M. P. No. 278/83. I am not reiterating those grounds here. Suffice to say that the stage has not reached for releasing the petitioners on bail.

5. All the three accused were accused in two other crimes. Crime Nos. 102 and

103 of the Mattancherry Police Station, the first one involving offences under Sections 452. 395 and 34 of the Indian Penal Code and the second one covering Sections 143. 147. 148. 149. 324 and 307 of the I.P.C. The 1st accused was not granted bail. though he had moved applications for the same in those two crimes. He therefore moved this Court for bail in all the three cases filing CrI. M. Cs. 408, 409 and 410 of .1983. By order dated 13-6-1983 I dismissed all those petitions.

6. The present petitioners had been however. granted bail as regards Crime Nos. 102 and 103 of 1983 by order dated 7-6-1983. This has apparently encouraged them to contend that a distinction exists between the 1st accused in the three cases and the petitioners who are only accused 2 and 3. If bail could be granted in Crime Nos. 102 and 103 of 1983 as has been done by the learned Sessions Judge, the same reasoning and approach would justify an order to release them on bail in the present case too - is the contention of counsel for the petitioners.

7. The learned Public Prosecutor appearing on behalf of the State, opposed the application. It was submitted that if the petitioners are released on bail, it will seriously impede the investigation and defeat the ends of justice. The case chary in Crime No. 67 of 1983 was made available to me, on my request.

8. A copy of the order passed in CrI. M. P. Nos. 285 and 288 of 1983 by which the petitioners were granted bail in Crime Nos. 102 and 103 of 1983 of Mattancherry Police Station was produced in this Court by counsel for the petitioners. The common order passed in those petitions however appears to have given attention mainly to the aspect relating to the apprehension expressed by the Prosecution about the petitioners tampering with the prosecution evidence. The court felt that that apprehension could be obviated by imposing conditions regarding the movements of the petitioners and their future conduct. Accordingly the accused were directed to be released on bail, in the two crimes. on or after 18-6-1983 on their own bonds for Rs. 2,000 with two solvent sureties for the like sum to the satisfaction of the Judicial Second Class Magistrate. Cochin. Conditions regarding the movements and conduct of the petitioners were also imposed under that order.

9. It is doubtful whether the learned Sessions Judge would have passed the order granting bail if the facts of the present case had also been brought to his notice. It is sufficient to note for the purpose of this petition, that the two crimes were registered in respect of the incidents alleged to have occurred on 27-4-1983.

10. The allegation in Crime No. 67 of 1983 is that the petitioners along with Hamsa Koya trespassed into the Government Hospital, Fort Cochin at about midnight on 16-4-1983 where one Yoosuf was an in-patient undergoing treatment for the injuries sustained by him earlier in that day. All the three accused were armed with swords. They inflicted cut injuries with those swords. They threatened to kill the injured and openly gave expression to that idea by crying out that they would not permit him to live thereafter (vernacular omitted.-

Ed.) Due to the cut inflicted by Hamsa Koya, the little finger of the left leg of Yoosuf got chopped off there was an injury on the left foot also. The second petitioner also then inflicted another cut with his sword resulting in a bleeding wound at the ankles of both legs. The third accused administered an injury on the index finger of the left hand, with the sword he had with him. An alarm was raised by the wife of Yoosuf whereupon the patients and bystanders rushed to the scene. The accused then took to their heels.

11. The following reasons weighed with the learned Sessions Judge in rejecting the bail application- (i) Having regard to the various crimes in which the accused were involved. it was "most unsafe" to release the accused. There was possibility of the accused committing similar offences in future. (ii) The accused would terrorise the people for achieving the "sinister ends", (iii) There are reasonable grounds for believing that the accused had committed the offences punishable with imprisonment for life. (iv) The involvement of the accused in Crime Nos. 102 and 103 within a short interval would show that they will "stoop to any level" to achieve their desires or ends. It is clear that the accused would terrorise the people in the locality and also the witnesses who come forward to give statements against them in the three cases.

12. When the present petitioners had moved applications for bail in Crl. M. C. Nos. 358 and 359 of 1983 (relating to Crime Nos. 102 and 103 of 1983) during the vacation. I was disinclined to grant bail. And I clearly indicated them my reaction. At that juncture it was submitted that the petitions were not being pressed. In that view of the matter, those petitions were dismissed by my orders dated 24-5-1983 reading:

Having heard the counsel for the petitioners. I was not satisfied that bail could be granted. Counsel then submitted that petition is not being pressed. Hence it is dismissed.

It is not clear whether these facts had been fully disclosed before the learned Sessions Judge when after the reopening of the courts the petitioners moved Crl. M. P. Nos. 285 and 288 of 1983 before that court, for releasing them on bail in Crime Nos. 102 and 103 of 1983 of the Mattancherry Police Station. Whatever that be the Sessions Judge himself has realised by the time his subsequent order was passed on 9-6-1983 that the petitioners were not persons who could be released on bail.

13. Whether a consideration for preserving the personal liberty of a citizen to the extent possible and a zeal to avoid any avoidable incarceration of an accused inside a jail if that course could possibly be adopted without detriment to public justice would justify upsetting the order of the learned Sessions Judge, is the question that arises for consideration in the petition. I shall consider the question, bearing in mind the principles laid down and the guidelines indicated in the various judicial decisions including:

Vasudevan Nair v. State of Kerala 1966 KLT 1082 : Pullachi Chandu v. State of

Kerala 1978 KLT 665; Niranjana Singh and Another Vs. Prabhakar Rajaram Kharote and Others, ; Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh, .

14. The application of the petitioners for bail cannot be considered in total isolation from the hard realities that now confront public life in the State. Personal liberty must necessarily be preserved: but certainly not in such a manner as to facilitate anti-social elements to destroy the very fabric of the democratic set up under the Constitution. Any attempt made to bring to a grinding halt the machinery entrusted with the maintenance of law and order has to be checkmated when such attempts are made with unjustifiable and unlawful use of the "sword or the purse". In dealing with a given local situation, courts should not be carried away by populist catch words. Considerations which may have relevance in more orderly societies, where, by reason of tradition or otherwise, crimes do not generally relate to heinous acts cannot be blindly imported in sensitive areas or cases. We do not yet have sufficient and reliable judicial statistics subjected to serious study which would enable evolving of meaningful solutions in the matter of prevention or suppression of crimes. Such as the statistics prepared by Sir John Macdonell in England. His analysis of the murder statistics in 1905 "drew attention to the facts that the great majority of murders were committed by men and that the majority of victims were women - wives, mistresses or sweethearts." And he said:

I am inclined to think that this crime is not generally the crime of the so-called criminal classes but is in most cases rather an incident in miserable lives in which disputes quarrels angry words and blows are common.

(emphasis supplied).

The Gowers Commission - The Royal Commission on Capital Punishment, 1949-53 - in England had the later statistics for the first half of the 20th century. The Commission on examination found that the statistics confirmed "Sir John Macdonell's statement that murder is not, in general, a crime of the so-called criminal classes." (See Social History and Law Reform. The Hamlyn Lectures Thirty-first series by O. R. McGregor). A distinction therefore appears to have been made as regards crimes made by "the so-called criminal classes" and other crimes.

15. The increase in crime appears to be a global phenomenon, with perhaps the exception of Japan where the "social fabric has been more resistant to the scourge." Some advanced countries have revised their methodology in dealing with this new phenomenon, France. for example brought a new legislation, the Freedom and Security Bill. in the light of a comprehensive examination of the various aspects by a Study Committee. One of the objectives of the legislation was "the need to impose more severe penalties on the authors of violent crimes." Preventive and repressive measures appear to have been considered by the Study Committee. As stated by M. Le Gondre. in his article in Le Monde on

22-2-1981: "But the priorities have been reversed: punish first. cure afterwards, everything in its time -prevention which requires patience and long effort, and repression which is supposed to give quick results". President Giscard d'Estaing commented then: "Insecurity must be met by society with prevention and punishment. Let there be no mistake: prevention alone cannot get at the roots of the evil." Perhaps the mood of the nation was reflected in the statement of Georges Marchais:

The struggle against crime and criminality is a preoccupation of the French. They want to live in security.... It's one of the conditions of their freedom." These developments in France had been the subject-matter of an editorial note, in Calcutta Weekly Notes, a law journal noted for its incisive analysis of legal problems and studied and critical comments on legal topics and judicial pronouncements (See (1980-81) 85 Calcutta Weekly Notes. Editorial page 651.

16. The approach made even by a developed nation like France, on the basis of materials disclosed by the report of the Study Committee may give useful hints for thought whenever law and order situation is found to be deteriorating by an abnormal rise in crimes. If in such a country like France priorities have been reversed and repression of the crime has taken precedence over reformation of the criminals (perhaps in tune with Carlyle's great Law of Conduct "Do the Duty that lies nearest thee") that may be a relevant aspect to be taken note of by Social Scientists and Administrators. And let it be remembered: France was a cradle of many a liberal thought and revolutionary concept.

17. It is useful to have particular reference to the situation now obtaining in this State itself. Any Judge who sits in the criminal division of this Court cannot but be distressed by the sight of a long procession of hostile witnesses. making their appearance along the various cases coming up for arguments. Instances are not rare where perjurers effectively wreck prosecutions against even day-light murderers. One of the recent Bench decision to which I was a party related to the murder of an Executive Officer of the Thodupuzha Panchayath. in his office. during office hours and at a time when the Panchayath President and members of the staff were present in the office. The perfunctory investigation, missing crucial documents sad lapses on the part of the prosecution and the perjuring witnesses resulted in an acquittal. which had to be confirmed by this Court. In the course of the prolonged arguments in the case. I used to reflect over the words of Stone. J. (of the United States where he referred to a criminal prosecution "as something more than a game in which the Government may be checkmated and the game lost merely because its officers have not played according to rule".

18. Earlier administrators of India who had occasion to watch and study the Indian situation about two hundred years back attributed perjury to the inherent depravity of the average Hindu". Some insight into the thinking in those days is given by the passage reading:

Proceedings. it is to be feared were in this idyllic period often perfunctory, and a great deal of the perjury which is now attributed to the inherent depravity of the average Hindu may be explained by the want of discrimination and care in the old Tribunals. It is not that the people believe in lying in the abstract. They have imbibed somehow a notion that lying is the proper thing in an English Court. In this respect the process of amelioration was already beginning in Lord Amherst's time. The necessity of codifying the law was then recognised though India had still to wait many years for the boon bestowed upon it by Lord Macaulay and Sir James Stephen.

(Emphasis supplied).

(See "Rulers of India". Lord Amherst. Oxford 1894. page 43 Edited by Anne Thackeray and Richardson Evans). That was however, a situation which was prevalent two centuries back. Why should the ghosts of perjury still haunt the courts of independent India more than 30 years after it became a sovereign republic? The provisions envisaged by Macaulay for suppressing the evil of Perjury. Sections 191. 192 etc. I.P.C. - by and large, remain uninvoked.

19. The impact of such obstruction in the investigation of cases and the suppression of crimes is not difficult to forecast. Even in the United States of America, Judges have expressed distress at the ineffective enforcement of criminal laws.

20. More than fifty years back. Justice McReynolds while giving his opinion in *Alridge v. United States* (1930) 283 US 308, observed as follows:

Unhappily the enforcement of our criminal laws is scandalously ineffective. Crimes of violence multiply: punishment walks lamely.

The learned Judge further observed:

Courts ought not to increase the difficulties by magnifying theoretical possibilities. It is their province to deal with matters actual and material: to promote order, and not to hinder it by excessive theorizing of or by magnifying what in practice is not really important.

Erosion of public confidence in the effectiveness of the machinery for the maintenance of law and order may pose a serious threat even to the Rule of Law. There seems to be much meaning in the statement: "Justice should be denuded not only by process but by product." (See "Unequal Justice" by Jerold S. Auerbach 1976 Page 308).

21. A bulging purse (quite often loaded with money that is not "white") may be one of the villains who so seriously stabs the administration of justice from the back. Some recent orders of this Court, in bail matters. have pointed out the necessity for the courts to be circumspect in granting bails. Bhat, J. while rejecting six bail applications in what is now known as the Vypeen Liquor tragedy case, observed :

It should also be realised that the area and pattern of crime is fast changing in our country. It has kept pace with and even surpassed the socio-economic changes in the country. The old concept of crime is in a large measure, yielding place to new concepts.

The emergence of a social and economic powerful group which could "successfully thwart the course of justice and which is so powerful as to keep them-selves away from the police net for a long time or even to win over and intimidate witnesses" was noted by the learned Judge. The following appear to be words which have great significance and relevance in the present situation:

The court cannot take an ivory tower-approach in matters like this. The court must also play its own role in ensuring that the cause of public justice is not abandoned.

(See order in Crl. M. C. 643. 648. 649. and 650 of 1982 dated 29-10-1982).

22. Only the other day, Brother Sivaraman Nair, J. observed in the course of an order in a petition moved by the-State for cancellation of an anticipatory bail:

In the context of the recent spurt of serious crimes in this area and the involvement of the affluent in such crimes with reasonable apprehension of tampering with evidence by or on behalf of such affluent criminals, it seems to be necessary that a very serious view has to be taken of crimes in the interests of public justice.... Attempts to tamper with or influence investigation into serious crimes from whichever quarter they come have to be resisted at all cost and all attempts have to be made to see that the crimes are detected at the earliest and offenders brought to book with the-least of avoidable delay.

(See order in Crl. R. P. 229 of 1983 It. 15-6-1983).

23. What has been stated about the obstructionist activities of the affluent will apply with equal force to those who while at large strike terror in a locality impeding the investigation and dissuading the witnesses from giving evidence without a sense of fear. In other words defeating of public justice and of a fair criminal trial should be put an end to whether it be done by the purse or by the sword,

24. In this case the petitioners are allegedly persons who have literally wielded their swords. And that too against an injured inpatient in a hospital. It is not desirable or necessary at this juncture to go into the details of the materials available in the case diary. That the incident happened inside a Government Hospital, and at the dead of night is prima facie established. The statement of the wife of Yoosuf who was attending on him in the Hospital and the statements of the Nursing Assistant Narayanan, the Staff Nurse, Elsia Joseph and the Doctor are available in the case diary. Having gone through the case diary, I have no hesitation in agreeing with the learned Sessions Judge that there are reasonable grounds, prima facie speaking, to hold that the petitioners have committed offences punishable with imprisonment for life. Their conduct and involvement in

Crime Nos. 102 and 103 of 1983 will also give sufficient indication of their propensities and possible activities if released on bail. That they would venture to trespass into a Government Hospital and at the dead of night, despite there being policemen on duty besides the members of the Hospital staff, and other patients and bystanders furnishes a pointer to the dare devil nature of the accused. There could not therefore possibly be any doubt whatever that they will terrorise the people in the locality and interfere with the investigation of the case, the moment they are set at large. Public justice would be a necessary casualty if that course is adopted. It may also be noted that the petitioners could be arrested only on 5-5-1983 and 6-5-1983 respectively. Having regard to the facts stated above. I am clearly of the view that the petitioners are not entitled to any indulgence from this Court. Public justice will surely suffer if they are now released on bail.

25. I am also of the view that the imposition of stringent conditions along with the grant of bail will not conserve the objective of an efficacious trial, when the accused can create a panic by their mere presence outside. Ensuring a proper observance of the conditions imposed while granting bail would itself sometimes require an enormous strain on the police force with their even otherwise onerous and responsible duties. Imposition of such a strain on a disciplined force is not in public interest in situations like the present one.

26. In the light of the preceding discussion. I dismiss the application for bail.