
(2023) 01 KL CK 0173
In the High Court Of Kerala
Case No : Bail Application No. 10418 Of 2022

Johny Y.N.

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 18-01-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 34, 294(b), 302, 323, 326, 341, 342, 364

Citation : (2023) 01 KL CK 0173

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : J.R.Prem Navaz, Sumeen S., Sajju S

Final Decision : Allowed

Judgement

Bechu Kurian Thomas, J

1. This is an application for regular bail filed under Section 439 of the Code of Criminal Procedure, 1973.
2. Petitioner is the accused in Crime No.1423 of 2021 of Parassala Police Station, Thiruvananthapuram district, registered for the offences punishable under Sections 364, 341, 342, 323, 326, 294(b), 302 r/w Section 34 of the Indian Penal Code, 1860.
3. According to the prosecution, on 24.06.2021 the accused murdered one Thomas, who is the brother of the defacto complainant. Subsequent to the investigation, the final report was filed and the case is now pending as S.C.No.1262 of 2022 before the Additional Sessions Court, Neyyattinkara.
4. Sri.J.R.Prem Navaz, the learned counsel for the petitioner, submitted that the entire prosecution allegations are false and that petitioner is innocent of the crime. It was further submitted that there are no eye witnesses to the incident and the prosecution case is built upon circumstantial evidence. According to the

learned counsel, despite the petitioner having been arrested on 27.06.2021 the trial has not yet commenced as the prosecution is awaiting the report of the Forensic Science Laboratory. In any event, the learned counsel submitted that, the continued detention of the petitioner will deprive his right to liberty under Article 21 of the Constitution of India especially since the possibility of an immediate trial is remote. It was also submitted that petitioner is willing to abide by any conditions that may be imposed upon him.

5. Sri.Sajju S., the learned Public Prosecutor, opposed the grant of bail and submitted that allegations are serious requiring continued detention. It was further submitted that report of the Forensic Science Laboratory has already been received and that the petitioner if released on bail would be a threat to the family of the deceased. It was also contended that the mother of the deceased had earlier itself filed an affidavit pointing out that there was threat to her life and, therefore, if the petitioner is released on bail, she apprehends danger to her life. It was also submitted that on three earlier occasions, the bail applications filed by the petitioner were dismissed and there are no change of circumstances warranting the grant of bail now.

6. I have considered the rival contentions.

7. In the order dated 01.07.2022 in B.A.No.4856/2022, this Court had noticed that the earlier two bail applications, were rejected by this Court and also observed that there are no change of circumstances to consider the grant of bail to the petitioner. It was also noticed that the mother of the deceased had expressed her apprehension during the investigation, which itself about the threat to her life from the accused and his goons.

8. However, for the last more than 500 days i.e., from 27.06.2021 petitioner has been in custody. The possibility of an immediate trial is also very remote. Since the trial has not yet commenced and considering the nature of allegations, I am of the view that further detention of the petitioner would deprive him of his liberty and may amount to conviction before punishment. Accordingly, I am of the view that, the long lapse of time and the inability to commence the trial till date, on account of the delay in obtaining report from the Forensic Science Laboratory, justifies the grant of bail to the petitioner, subject to strict conditions.

9. In the result, this application is allowed on the following conditions:-

(a) Petitioner shall 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.

(b) Petitioner shall co-operate with the trial of the case.

(c) Petitioner shall not enter into the jurisdictional limits of Parassala Police Station, until conclusion of trial.

(d) Petitioner shall not intimidate or attempt to influence the witnesses; nor shall

he attempt to tamper with the evidence.

(e) Petitioner shall not commit any similar offences while he is on bail.

(f) Petitioner shall not leave the country without the permission of the jurisdictional Court.

10. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with the law, notwithstanding the bail having been granted by this Court.