
(2010) 09 KL CK 0004
In the High Court Of Kerala
Case No : Bail Appls. No. 4881 of 2010

Kamarudheen

APPELLANT

Vs

SHO, Muvattupuzha Police Station

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161(3), 167, 172, 172(1), 172(2)
Penal Code, 1860 (IPC) — Section 120(B), 143, 147, 148, 149
Unlawful Activities (Prevention) Act, 1967 — Section 16, 18, 18(B), 19, 20

Citation : (2011) CriLJ 388 : (2011) 1 KLJ 385

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : Liffy P. Francis, for the Appellant; P.N. Sukumaran, Addl. Director General, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramkumar, J.—The Petitioners in these four bail applications seeking regular bail u/s 439 Code of Criminal Procedure are some of the accused persons in Crime No. 704 of 2010 of Muvattupuzha Police Station for offences punishable under Sections 143, 147, 148, 120B, 323, 324, 326, 341, 427, 506(ii), 307, 153A, 201, 202 and 212 read with Section 149 IPC, Section 3 of the Explosives Substances Act, 1908 and Section 15 read, with Sections 16 and 18, 18B, 19 and 20 of the Unlawful Activities (Prevention) Act, 1967. THE GHASTLY CRIME

2. The occurrence in which a Professor of Newman College, Thodupuzha by name T.J. Joseph, his sister and mother were assaulted and the right palm of the said Professor was chopped off, took place at about 8 a.m. on 4-7-2010 which was a Sunday. According to the prosecution, pursuant to the criminal conspiracy hatched by the leaders and activities of the Popular Front of India (PFI for short) and its political wing called Social Democratic Party of India (SDPI for short), seven identifiable persons formed themselves into an unlawful assembly armed with deadly weapons like hatchet, chopper, explosives etc. and came in a Maruti

Omni van affixing a false registration No. KL-07/" AD 7201 (which was later identified as KL-07/AH 8768) and intercepted the Wagon R car bearing registration No. KL-17/E 1795 in which the Professor along with his sister Sr. Stella (who is, a nun) and his mother Elikutty were returning home after attending the Sunday holy mass at Nirmala Matha Church. The above car was obstructed on the road leading to the Professor's house near Nirmala Public Senior Secondary School, at Hostelppady, Muvattupuzha. The 7 accused persons who were waiting near the Nirmala H. S. S. at 8.05 am. on 4-7-2010 suddenly got down from the Omni Van and smashed the window panes and side panes of the Professor's car and pulled the Professor out of the car and dragged him on to the road. One of the accused with the assistance of the others repeatedly inflicted cuts on the right palm of the Professor with the hatchet resulting in amputation of the right palm of the Professor. Several cut injuries were inflicted on various parts of the body of the Professor with a view to cause his death. Sr. Stella who was in the car along with the Professor was also manhandled and restrained from rescuing her brother. 81 year old Elikutty, the mother of the Professor, was also not spared by the assailants. Salomi (de facto complainant) and Midhun the wife and son of the Professor who rushed to the scene seeing the incident were threatened and intimidated by the assailants who threw explosive substances causing explosion and smoke. Midhun who attempted to rescue his father was lifted and thrown down into a nearby compound lying at a lower level of 4.10 meters and the boy also sustained injuries. When hearing the sound of explosion and the hue and cry the local people started rushing, the assailants escaped from the scene in the Maruti Omni van after throwing the severed palm of the Professor into the nearby compound. The motive for the assault is stated to be the incorporation by the Professor of a question ridiculing Prophet Mohammed and the Islam religion in the question paper set for the internal examination in Malayalam for the B. Com in the said college.

RANK OF THE PETITIONERS

3: The Petitioners in B. A. No. 4826/2010 are accused Nos. 11 to 13 who were arrested on 21-7-2010. The Petitioner in B. A. No. 4881/2010 is the 7th accused who was arrested on 9-7-2010. The Petitioner in B. A. No. 5080/2010 is the 10th accused who arrested on 21-7-2010. The Petitioners in B. A. No. 5192/2010 are accused Nos. 15 and 16 who were arrested on 23-7-2010 and 24-7-2010 respectively.

4. I heard the learned Counsel appearing for the respective Petitioners and Advocate Sri. P. N. Sukumaran, Additional Director General of Prosecution.

ARGUMENTS ON BEHALF OF A11 TO A13

5. Advocate Sri. T.G. Rajendran, the learned Counsel appearing for A11 to A13 (Petitioners in B. A. No. 1826/2010) made the following submissions before me in support of his request for bail:-

A11 to A13 are law abiding citizens and they were not participants of the

occurrence in which the injured persons were attacked. Going by the remand report, A10 and A11 had allegedly harboured the 4th accused (Yunus) by providing him safe hideouts at different places. A12 and A13 had rendered financial assistance and A13 allegedly helped 1st accused Jafar by providing him a safe hiding place. Except alleging that A11 to A13 were members of the criminal conspiracy, there is absolutely no material to prove the same. Even assuming that the case of harbouring some of the assailants is true, it attracts only an offence punishable u/s 212 IPC which is bailable. The source of information allegedly proceeding from the 4th accused Yunus after his arrest cannot be the basis for implicating A11 to A13.

ARGUMENTS ON BEHALF OF A7

6. Advocate Sri. Lify P. Francis, the learned Counsel appearing for A7 (the Petitioner in B. A. No. 4881/2010) made the following submissions before me:-

In order to attract the offence punishable u/s 120B IPC there should be an agreement by two or more persons either to commit an illegal act or to do an act which is not illegal but by illegal means. The prosecution has no case that A7 had participated in the meeting of the conspirators at Kothamangalam or Perumbavoor prior to the occurrence. The only overt act alleged against A7 is that he handed over the sim card of his DOCOMO Connection No. 9037220794 to his neighbour A6 Shajeer for his use and A6 had used the sim card for contacting several persons including one Kasim (A17). That by itself cannot constitute any offence so as to rope in A7. A7 is conducting a band troop and his troop used to be hired by several political parties. On 3-7-2010 his troop had arranged a parade for the freedom parade rally of A4. That incident cannot be taken as an act of conspiracy.

ARGUMENTS ON BEHALF OF A10

7. Advocate Sri. B. Raman Pillai the learned Counsel for A10 (the Petitioner in B. A. No. 5080/2010) made the following submissions before me:-

A10 had absolutely no role in the alleged criminal conspiracy. He was not at all aware of any such conspiracy and he did not have any prior information about the alleged incident. The remand report pertaining to A10 does not reveal any circumstance which is incriminating. Even though A10 was arrested 21-7-2010 and got remanded to judicial custody, his police custody was not sought until a copy of the bail application (Crl. M. C. No. 1289/2010) dated 29-7-2010 filed before the Sessions Court was served on the Public Prosecutor on 30-7-2010. Police custody of A10 was obtained only thereafter till 5-8-2010. Even after prolonged police custody for 5 days the Investigating Officer was unable to elicit any further information from A10. The only allegation levelled against A10 is that he along with one Niyas (A31) took A4 (Yunus) who was residing in the house of Sadhik (A24) and Siyad (A26) at Aluva, to Thrissur in his car and from there to one Ibrahim (A45) of Malappuram. The date of the said transportation is not disclosed. Even assuming that the above acts are true, they may at best amount

to an offence punishable u/s 212 IPC which is bailable and that too only if it is proved that A10 was aware that A4 was a wanted criminal and that A10 had taken A4 in his car with the intention of harbouring him. Except an allegation in the remand report dated 22-7-2010 that A10 is involved in the criminal conspiracy, there is total lack of any material to support or substantiate the said allegation. On the contrary the said remand report refers to the confession by Yunus (A4) regarding the criminal conspiracy hatched by the accused persons who do not include A10. In the remand extension report dated 4-8-2010 also, there is no incriminating material relied on by the investigating officer so as to justify the continued detention of A10. No weapon has been recovered from A10. When the remand report dated 22-7-2010 and remand extension report dated 4-8-2010 do not contain any incriminating material or circumstance against A10, it is not open to the Public Prosecutor to elicit grounds or circumstances which are not referred to in the remand reports. A remand report is a vital document which should contain each and every ground on which a person accused of an offence is sought to be remanded to custody (vide Surinder Kumar Vs. State of Punjab,)

ARGUMENTS ON BEHALF OF A15 AND A16

8. Advocate Sri. Sunny Mathew appearing for A15 and A16 (the Petitioners in B. A. No. 5192/2010) made the following submissions before me:-

No overt acts have been alleged against the A15 and A16. There is absolutely no evidence to prove the involvement of A15 and A16 in the commission of the aforesaid offences including criminal conspiracy. Even though police custody of A15 and A16 had been given, no incriminating material was unearthed.

ARGUMENTS OF THE STATE PUBLIC PROSECUTOR

9. The learned Additional Director General of prosecution on the other had submitted as follows:-

The complicity of the Petitioners in the criminal conspiracy culminating in the assault on the victims and the harbouring of the assailants thereafter has been revealed in the investigation so far conducted. The investigation of the case is yet to be completed and if at this stage of the investigation the Petitioners are granted bail, they will definitely influence and intimidate the prosecution witnesses and may also flee from justice by making themselves scarce. The facts of this case will clearly show that a Thalibhan model attack was carefully planned so as to teach the Professor a lesson so that he will not hereafter set any such question paper with his right hand. (A5) M.K. Nasar is yet to be arrested and he was the person who had participated in the conspiracy for attacking the Professor, A5 had made all attempts to make communal tension between the Christians and the Muslims and had made all arrangements for financing the operation and had selected suitable persons for the operation supplying them arms, explosives, mobile phones etc. and arranging the preparation of a sketch showing the route to the Professor's house and also arranging the escape of the

assailants and giving them medical aid.

JUDICIAL EVALUATION

10. After hearing both sides and after perusing the case diary files, I do not think that any of the Petitioners has made out a ground for his enlargement on bail.

A11 to A13 (B. A. 4826/2010)

11. A11 (Moideen Kutty aged 36 years) is an active worker of PFI/NDF for the past nine years and is the Unit Member of PFI, Valancherry unit and Unit Member of SDPL, Valancherry branch. He had knowingly and intentionally harboured A4 (Yunus) and had screened him from legal proceedings. He had prior knowledge about the incident and was involved in the conspiracy which took place on different dates, time and places. A12 (Shiyas aged 26 years), is the Secretary of PFI, Aluva division. He had also participated in the criminal conspiracy to attack the Professor and had made arrangements for the operation including the abscondence of the assailants and gave financial aid to them. A13 (Mohammedali aged 33 years) is also an active worker of PFI/NDF for the past nine years and is the President of PFI Muvattupuzha area of which A3(K.K. Ali) is the Area Secretary. He had also actively participated in the conspiracy referred to above. A7 (B.A. 4881/2010)

12. A7 (Kamarudeen aged 30 years) was arrested on 9-7-2010. He is active worker of PFI and is in charge of the Junior Front which is the junior wing of PFI in the Kalamassery division. He had obtained two SIM cards with mobile numbers 9995377187 and 9037220794. The former number was used by himself, but the latter number was handed over to A5 (M.K. Nasar) who is the prime accused and the master brain of the operation and who is still absconding. The SIM card given by A7 was used by A5 on 4-7-2010, the date of occurrence. A5 had contacted Dr. Reneef (A9) and Abdul Salam (A8) several times on the date of occurrence using the mobile connection given by A7. All the operations in this case were engineered by A5 using the said connection. A5 directed the doctor (A9) to go to the house of Abdul Salam (A8) for treating the accused who got injured at the hands of Midhun, the son of the Professor. A7 also had prior knowledge about the incident and he was involved in the conspiracy which took place at different times and different places.

A10(B. A. 5080/2010)

13. A10 (Abdul Latheef aged 40 years) was arrested on 21-7-2010 pursuant to the confession of A4 (Yunus), the President of PFI, Muvattupuzha division. A10 was also involved in the criminal conspiracy referred to above. He had assisted A4 to escape from Aluva in his Maruti Ritz car bearing Registration No. KL/42-C 4700. At Thrissur A10 arranged a flat under construction near Aswathy Hospital. The said flat was taken for interior decoration by A10's brother-in-law Iqbal on contract. A10 harboured A4 and thereafter carried A4 to Puthenathani in Malappuram District where he, for the safe shelter of A4, entrusted A4 with A45

(Ibrahim) who is still absconding and who is running a shoe mart. A10 also arranged to harbour Najeeb and Noushad (A18 and A46) in the aforesaid flat. Both A10 and his first cousin Najeeb (A18) are unit members of PFI, Uliyannur Unit. A10 is an active worker of PFI/NDF for the past 10 years. Noushad (A46) is the leader of the PFI, Kalamassery division. The document seized from the car of Dr. Reneef (A9) at the time of his arrest shows that A10 was entrusted with the charge of providing food for the participants of the PFI freedom parade which was scheduled to be conducted on 15-8-2010 but which was banned by the District Magistrate.

A15 and A16 (B.A. No. 5192/2010)

14. A15 (Siyad aged 28 years) had rendered assistance in harbouring the assailants and providing new mobile connections to them. Verification of the call details of the mobile phone used by A15 clearly revealed his complicity in arranging two mobile phones with two new Vodafone connections. A15 had also arranged a Maruti Alto car for the escape of A5 (Nasar) and A17 (Kassim) A15 is the President of PFI, N. Paravur division. He had supplied Shanavas (A50) from his division for the organized attack on the Professor.

A16 (Sikander Ali Khan, aged 28 years) had assisted A4 (Yunus Aliyar) by preparing the sketch of the route to the house of the victim, Professor Joseph. A16 is an auto rickshaw driver and is an active worker and member of the Kizhakkekara Unit of the PFI. A draft sketch of the route was recovered from the dash box of his auto rickshaw bearing Reg. No. KL/17F 5760. The detailed sketch of the route to the house of the Professor had been handed over by A16 to A4 from the PFI office at Muvattupuzha market.

15. For the blasphemous act on the part of Professor Joseph in incorporating the question ridiculing prophet Mohammed and Islam religion, the Professor was already proceeded against by the Thodupuzha Police by registering Crime No. 327/2010 u/s 153A and 295A IPC on 26-3-2010. The Professor who surrendered before the Investigating Officer in that case was remanded to judicial custody and was later released on bail by the Court. But what followed thereafter was the indiscriminate and disproportionate retaliation which took the shape of a terrorist activity. As of now, there are 51 accused persons of whom A5, A17, A18, A21 to A36, A38, A40, A41, A42, A44 to A46, A50 and A51 have not been arrested so far. The assailants who came in the Maruti Omni van are A14, A27, A28, A37, A49, A50 and A51 of whom A14 and A49 alone have been apprehended so far.

16. It is true that the remand report dated 22-7-2010 and the remand extension report dated 4-8-2010 pertaining to A10 do not make mention of all the incriminating circumstances now relied on against him. The Code of Criminal Procedure does not even use the expression "remand" during the crime stage (investigation stage) of a case. Section 167 Code of Criminal Procedure only uses the expression "detention" at that stage. It is only at the post cognizance stage that the Code of Criminal Procedure uses the expression "remand" (vide Section

309(2) Code of Criminal Procedure). However, by way of long usage or practice, the process of the Magistrate authorizing the detention of an accused person during the stage of investigation also is understood as "remand".

17. There is no provision in the Code of Criminal Procedure requiring the Police Officer to submit a "remand report". But u/s 167 Code of Criminal Procedure it is imperative that the Police Officer should send along with the accused a copy of the entries in the Police diary which he is bound to maintain u/s 172 Code of Criminal Procedure. Usually copies of the entries in the Police diary are not separately sent to the Magistrate. A gist of the above entries in the Police diary alone is incorporated by the Police Officer in the remand report or in the remand extension report. The purpose of filing such reports and the purpose of incorporation of the diary entries in such reports is to enable the Magistrate to decide whether he should authorize the detention or further detention of the accused to Police or judicial custody, as the case may be, or to release the accused. Bearing in mind the purpose and significance of the remand report and the Constitutional rights of the arrestee, the accused has a right to get a certified copy of such remand report. (See *In Re. Raman Velu* - 1972 KLT 922). Section 172(2) Code of Criminal Procedure has conferred the power on the Court to send for the Police diary and use the same to aid the Court in any enquiry or trial. But the accused or his counsel is not entitled to call for or peruse the Police diary maintained by an Investigating Officer u/s 172(1) Code of Criminal Procedure in view of the prohibition under Sub-section (3) thereof. In Kerala, even before the insertion of Sub-section (1A) in Section 172 Code of Criminal Procedure by Amending Act 5 of 2009 w. e. f. 31-12-2009, the Police diary maintained by the Investigating Police Officers used to contain the statements of witnesses recorded u/s 161(3) Code of Criminal Procedure and therefore the diary which is being produced for perusal of the Court is a combination of a Police diary u/s 172(1) Code of Criminal Procedure together with the case diary statements recorded u/s 161 Code of Criminal Procedure. Now, after the aforesaid amendment of the Code of Criminal Procedure case diaries produced by the Police before Courts in the entire country will have to be a comprehensive diary as aforesaid.

18. In *Surinder Kumar Vs. State of Punjab*, , the only material relied on by the prosecution to prove the charge against Surinder Kumar was a confession made to PW6. That solitary circumstance was not mentioned in the remand application and that was taken as an important circumstance by the Apex Court as an additional ground to hold that the charge against Surinder Kumar was not proved. In the present case, the remand report as well as the remand extension report pertaining to A10 give a gist of the incriminating material (though not the entire material) against A10. Hence I am not impressed by the argument based on *Surinder Kumar Vs. State of Punjab*, .

19. All the accused in this case are either members or office bearers of PFI or SDPI. All the Petitioners in these bail applications had prior knowledge about the

proposed operations and were also involved in the criminal conspiracy. After the "question paper" issue, the PFI and SDPI activists had staged protest marches to Newman College. They were later conspiring to take revenge against the Professor by attacking his house or by either killing him or maiming him by amputating his right palm with which he had prepared the question paper. A5 (M.K. Nasar) who is still absconding, Was giving leadership to the action plan. Different persons were entrusted with specific duties such as selecting the suitable manpower for the actual execution of the bodily attack, collection of details of the Professor and his family, watching the movements of the members of the family and movements of the Police, preparing route sketch, collection of sufficient communication devices like mobiles phones, SIM cards, collection and purchase of vehicles, finding out suitable hideouts, collection of weapons, mobilising funds for expenses etc. An occurrence of this nature is the first of its kind in the State. A good majority out of the 51 persons so far arrayed as the accused in the case is yet to be apprehended. The investigation is still in the nascent stage. The apprehensions expressed by the State Prosecutor cannot be said to be far fetched. The question is not whether how long the Petitioners have been in judicial custody, but whether it is feasible to release them on bail in the security of the State in a case where there has been a gruesome attack on the life of a Professor by means of terrorist activity. The occurrence throws an open challenge at the society at large. It is not possible to give a precise definition of the word "terrorism" or to lay down what constitutes "terrorism". Terrorism is the premeditated, deliberate and systematic murder, mayhem or violence including use of force or violence against property, attended with threats and intimidation of innocent people in furtherance of political or social objectives, with a view to create fear or coerce a Government or the civilian population or any segment thereof to modify their behaviour or policies. (Vide Devender Pal Singh Vs. State National Capital Territory of Delhi and Another,). The most important result of the use of violence is not merely the physical and mental damage of the victim but also the prolonged psychological effect it produces or has the potential of producing on the society as a whole. If the object of the activity is to disturb harmony of the society or to terrorise people and the society with a view to disturb even the tempo or tranquility of the society and if a sense of fear and insecurity is created in the minds of a section of the society or the society at large, then it will, undoubtedly, be held to be a terrorist activity. (Vide Mohd. Iqbal M. Shaikh and Others Vs. The State of Maharashtra, . Terrorism seems to have no barriers. It may strike anybody at any time. (See Muhammed Navas v. Station House Officer, Edakkad and Anr. 2009 (3) KHC 545). It may mark the death knell of the law and order machinery if an opinion were to gain currency that any amount of precautionary measures and security arrangements may prove futile to combat terrorism.

After bestowing my anxious consideration to the facts and circumstance of the case, I am not satisfied that the Petitioners have made out a case for their enlargement on bail. These applications are accordingly dismissed.