

(1982) 10 KL CK 0005

In the High Court Of Kerala

Case No : Criminal M.C. 643, 648, 649 and 650 of 1982

K.K. Chandrasenan and Others

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-10-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 439
Penal Code, 1860 (IPC) — Section 272, 273, 304, 304A, 328

Citation : (1982) 10 KL CK 0005

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : M.N. Sukumaran Nair, B. Raman Pillai, Sunny Varghese, Vijayakumar, S. Gopakumaran Nair and George Jacob, for the Appellant; C. Sankaran Nair, Public Prosecutor, for the Respondent

Judgement

U.L. Bhat, J.—Criminal M.C. Nos. 648, 649 and 650 of 1982 are filed u/s 439 of the Code of Criminal Procedure by accused Nos. 1 and 2, 3 and 4 and 6 respectively in Crime No. 155 of 1982 of Narakkal Police Station. Criminal M.C. No. 643 of 1982 is filed u/s 438 of the Code of Criminal Procedure (hereinafter referred to as the "Code") by the 10th accused in the case. Since these applications arise out of the same crime case, they have been heard together and are being disposed of by common order.

2. Accused 1 to 4 were arrested on 5th September 1982, accused 1 and 2 have a case that they were not apprehended but they surrendered to the investigators. They earlier sought bail from this Court through CrI. M.C. Nos. 580 and 581 of 1982 and the bail plea was rejected on 24th September 1982. 6th accused was arrested on 12th September 1982 (there is a mistake in the prior order of this Court regarding his rank and the date of arrest). He has been unsuccessful in securing bail order from the Judicial Magistrate of the First Class, N. Parur and the Sessions Judge Ernakulam and he seeks an order of bail from this court. 10th accused seeks anticipatory bail. All the applications are opposed by the learned Public Prosecutor on behalf of the State.

3. A case was registered as Crime No. 155 of 1982 suo motu by the Sub Inspector of Police, Narakkal against 1 and 2 and their unnamed salesmen under Sections 304A, 338, 272, 273, 328 read with Section 34 I.P.C. on the ground that poisonous arrack sold by them in various arrack shops in Vypeen area in Narakkal Excise Range caused death of several consumers and disability to other large number of consumers. According to the latest information, as many as 71 persons died and about 800 persons were hospitalised. Investigation was taken over by the Crime Branch on 4th September 1982. Thereafter report was submitted to the concerned Magistrate to the effect that investigation has disclosed offences u/s 304 I.P.C. and under certain provisions of the Abkari Act and suggesting deletion of Section 304A I.P.C. The report also stated that accused 3 to 6 and other employees of accused 1 and 2 also have complicity in the crime. Subsequent reports indicated complicity of accused 7 to 10.

4. Prosecution case has been explained at length in the prior order rejecting bail. I shall briefly refer to the same.

5. Accused 1 and 2 are abkari contractors, having obtained licences from the State Government to run arrack shops in Narakkal Excise Range for the current year. Accused 1 to 4 and 10 are associates in arrack contract business, mainly being financed by the 10th accused. 9th accused who runs a business in chemicals, on the suggestion of the 10th accused, evolved a formula for manufacturing arrack at a very much reduced price and supplied the formula and chemicals to the contractors. Onam celebrations, the most popular celebrations in Kerala, were in offing and it was expected that there will be a very great demand for arrack. Contractors are expected to sell only arrack supplied by the State Government, the cost of which, they thought to be excessive. Supply also, they thought to be inadequate. The contractors had purchased right to sell arrack by offering to pay very high sums as kist amount. Huge quantities of admixture of arrack were prepared and stored in unlicensed depots in Narakkal and distributed in bottles by the workmen of the contractors, the supervisory staff being accused 5 to 8. 6th accused himself had tasted the sample and he fell sick and was hospitalised. All the accused persons are experienced persons in the business of arrack and had knowledge that the admixture prepared by them was poisonous and harmful to human body and life. The arrack was distributed on the 1st and 2nd of September 1982 and it produced immediate consequences. Large number of people fell sick and had to be hospitalised in a large number of hospitals and some of them lost their lives and some others their eye sight, etc. Investigation has been proceeding briskly. Over 600 witnesses have been questioned already and a large number of documents have been seized. A large number of samples of arrack and a large number of items of viscera have been collected and sent for chemical examination. The case apparently has inter-state ramifications inasmuch as the 10th accused has business activities and association outside the State and supply of chemicals also was from outside the state. Accused Nos. 5, 7, 8 and 10 are not yet apprehended.

6. On a consideration of the materials collected during investigation and on an appreciation of the entire facts and circumstances of the case, in the order dated 24th September 1982, this Court took the view that it cannot be said that there are no reasonable grounds to believe that an offence punishable u/s 304 Part II is not made out. The offence is punishable with rigorous imprisonment for 10 years. Consequences of conviction are so grave that this Court came to the conclusion that it is reasonable to apprehend that apprehended accused are likely to make themselves scarce if let out on bail. In view of the circumstances that accused 1 to 4 are men of substance, the consequences of the conviction being so grave, the accused and their associates being quite influential, some of the witnesses questioned being either their associates or employees, substantial number of witnesses questioned and remaining to be questioned belong to socially and economically weaker Sections of the population, this Court took the view that there are reasonable grounds to believe that the release of accused 1 to 4 on bail at that stage may hamper the investigation and enable tampering of witnesses and thwarting of the course of justice. The entire case diary relating to the crime has been placed before the court.

Crl. M.C. Nos. 648 and 649 of 1982:

7. The learned Counsel for the petitioners in these two cases, who are accused 1 to 4, submitted that in the light of certain additional circumstances now obtaining, this Court may grant bail to them. It is argued that some of these accused persons have wives and minor children who have nobody else to look after them. It is also stated that the standing paddy crop in the fields of the first accused could not be harvested due to the obstruction of persons associated with "People's Committee against Poisonous Arrack". It is also argued that in none of the remand reports presented prior to the earlier order of this court, was it mentioned that the accused may jump bail or may hamper the further investigation of the case. It is also pointed out that only accused 1 and 2 are the contractors and not accused 3 and 4. It is also argued that accused 1 and 2 were not apprehended, but they surrendered on the basis of an understanding with the higher-ups in the executive and the police force that after interrogation they will not stand in the way of bail being granted to those accused.

8. I do not think any of the above mentioned submissions indicates a change of circumstance since the date of the prior order passed by this Court refusing to grant bail, justifying a different view being taken in the matter of grant of bail. It is difficult to believe that the wives and children of accused 1 to 4 are in a helpless condition and that they do not have support from elsewhere. At any rate, in the absence of circumstances justifying grant of bail, this circumstance by itself will not enable the court to grant bail.

9. The court is certainly perturbed to note that valuable paddy crop belonging to the first accused could not be harvested. From the arguments submitted at the Bar, I gather that the wife of the first accused suggested to the district authorities that the crop may be arranged to be harvested by the Government

and the value thereof adjusted towards the abkari dues payable by the first accused to the Government and the Government was unable to arrange for the harvest of the crops due to local resistance. It is also mentioned that "People's Committee against poisonous Arrack" demanded that the crop must be harvested and distributed among the victims of the tragedy and the Government was not prepared to accept that demand and that the persons associated with the Committee attempted to harvest the crops by force and this was prevented by the Government. It is, indeed, shocking to note that between the authorities and this committee, valuable paddy crops were allowed to be totally damaged and that all this took place when the spectre of drought condition is haunting not only several parts of the country, but also some parts of the State as well. This, indeed, is an unfortunate development. However, since the reasons which prevailed with the court to refuse to grant bail on the previous occasion, still continue to exist, this circumstance by itself will not enable this Court to grant bail.

10. Accused 1 and 2 alone were successful bidders at the auction regarding the arrack supply during the current year in the Narakkal Range. The fact that accused 3 and 4 were not directly associated with the contract is neither here nor there. That is because the investigation has disclosed that they are closely associated with this business in that Range. The argument of the learned Counsel for the Petitioner that the investigation is almost complete does not appear to be correct. Several accused persons are yet to be apprehended and more evidence is yet to be collected.

11. The last submission advanced on behalf of accused 1 and 2 is indeed startling. It is submitted that they surrendered to police custody on the assurance of some higher ups that once they were interrogated, the State will not stand in the way of bail being granted to them and it was on that assurance that they surrendered. This version is so incredible that the court is hesitant to place any faith in it. If, on the other hand, there is any truth in this version, all that can be said, is that it is a sad reflection on the times in which we are passing. It indicates the utter devaluation of the Machinery and the dominant position which persons like accused 1 and 2 are obviously occupying in the existing scheme of things. Whatever the higher-ups elsewhere may choose to do, I think, it is absolutely necessary that this Court should take scrupulous care to avoid granting legitimacy to such illegitimate arrangements. On an anxious consideration of the facts and circumstances of the case and the matters revealed from the case diary, I am unable to hold that the situation in regard to accused 1 to 4 has changed since the dismissal of the earlier bail applications filed by them so as to warrant an order granting bail to accused 1 to 4. Their plea is rejected.

Crl. M.C. No. 650 of 1982:

12. 6th accused is an employee of accused 1 and 2. It is stated that he tasted a small part of the poisonous admixture, fell ill and had to be hospitalised. He was

arrested after he was discharged from the hospital. It is argued by the learned Counsel that 6th accused, if at all, is a victim and not a culprit and that it is incredible to believe that knowing the liquor to be poisonous he tasted it. It is difficult to see anything incredible in what he did. According to the prosecution, he was engaged in preparing the admixture according to the formula supplied by the 9th accused. He did not drink copiously from it, but merely tasted a small quantity of it, obviously to find out if it had sufficient strength. That would explain his attempt to taste it. He is another link in the business which has resulted in the horrible tragedy. It may be that he is not a man of substance when compared to accused to 4, but he is an individual deeply involved in the arrack business as an employee of accused 1 and 2. He would have his own sphere of influence and activity. Considerations which weighed with this Court in refusing bail to accused 1 to 4 must necessarily weigh with this Court in rejecting his plea for bail, I am satisfied that release of the 6th accused at this stage on bail would also contribute to justice being thwarted for the same reasons as mentioned in regard to accused 1 to 4. His request for bail is rejected.

Crl. M.C. No. 643/82:

13. 10th accused seeks an order of anticipatory bail u/s 438 of the Code. In the petition he is described as a leading business man having business association with many leading business men in Kerala. It is also stated that he is a wholesale agent in the business of foreign liquor and that he leads a respectable life. His counsel described him as a well-known business man in Cochin. On the date on which this petition was argued, an advertisement issued by the Investigating Team in this case appeared in some leading newspapers stating that 10th accused has absconded and that any person or persons who give information leading to his apprehension will be suitably rewarded.

14. It is argued that 10th accused is innocent of any complicity in the crime and he had nothing to do with the business of accused 1 to 4 except that he had advanced them money in the past and they still owe money to him. This is not the stage at which the innocence or guilt of any accused has to be pronounced upon. What has to be considered now is whether there is sufficient material against the 10th accused indicating his complicity in this grave crime. Having had the advantage of glancing through the Case Diary placed before the court, I have to state that the Investigating Team has collected some material which would clearly point towards his association in this crime. The consequences of a conviction in this case as far as the 10th accused is concerned, are indeed grave. He is more highly placed in life than accused 1 to 4.

15. The learned Counsel for the 10th accused submitted that the court may not proceed on the basis that this well-known business man who leads a respectable life will be chary of facing trial and the consequences of trial. He has a family and he has other business commitments both inside and outside the State and therefore it is argued that he will not seek to escape the process of the court. Of course, the court can never be certain how exactly a person will react in a given

situation. His reaction can be assessed by the court only on a fair consideration of the facts and circumstances of the case. In the light of the vigorous and sustained investigation conducted in the case, if the accused has a feeling that the decision in the trial may go against him, I do not see any reason why this Court should not believe that he may seek to jump bail.

16. During the course of arguments in these petitions, the court had occasion to ask the learned Counsel for the accused, Sri M.N. Sukumaran Nair why 10th accused is evading arrest? The answer was that he was implicated at a belated stage of the investigation on account of the political pressure with a view to humiliate him in the eyes of the public and that is why he is not surrendering to the police. The learned Counsel also stated that there is no law which obliges a person figuring in a criminal case as an accused to walk into the police station and offer himself for arrest. In the petition filed on behalf of the 10th accused it is stated that during the last general elections in Kerala held in May, 1982, several leading politicians, including some members of the State Legislature, approached him for financial help, that he could not help some of those persons who belong to the present ruling front and therefore they got annoyed and swore vengeance against him, that it was at their instance that the Investigating Team in this case has implicated him as an accused and that he has already been interrogated by the police who became convinced of his innocence. The motive of such politicians, it is stated, is only to humiliate him by arresting and detaining him. If the 10th accused wanted the court to take these allegations seriously, the least that could have been done by him was to provide more details in his petition. The allegations in the petition, as they now stand, are too vague. Is it because the allegations are not true? or is it because the 10th accused is prepared to strike but afraid to wound? for is it because the 10th accused is using the forum of this Court to convey a hint to persons who are alleged to have sworn vengeance against him that if the attempts to arrest him and to keep him in police custody are continued, he will expose them? In this context another submission made by the learned Counsel has to be noticed. The learned Counsel submitted that the 10th accused is a law abiding citizen and he is prepared to surrender to the police and he is prepared to be interrogated provided there is an assurance that in regard to bail they will not take a negative attitude. Evidently, 10th accused is seeking some sort of arrangement or adjustment as is alleged to have been thought of initially in regard to accused 1 and 2. Whatever be the truth in regard to the allegations made by the 10th accused against unidentified politicians, this Court refuses to lend legitimacy to any such illegitimate arrangement as is suggested.

17. It is true that 10th accused was not named in the F.I.R. or even thereafter when other accused were named. The report implicating him as an accused in the case was sent to court on 15th September 1982. According to the learned Public Prosecutor, even before that, the investigating team had suspicion about 10th accused's complicity in the crime. They very much wanted to interrogate him. The learned Prosecutor denied that at any time he had been interrogated or

was available for such interrogation by the police. The Voluminous Case Diary placed before the court does not contain any statement as having been recorded from the 10th accused. At least his association with the past business activities of accused 1 to 4 is conceded.

Naturally, the investigating team would have been anxious to interrogate him. The Case Diary notes prepared by the Investigating Team show that even on 6th September 1982 he flew from Cochin to Madras in the company of another person, that he remained at Madras for some days shifting his residence from place to place and not disclosing his correct name, that on 21st September 1982 he had contacted an important person in Delhi and decided to go to Delhi, that he motored down to Trichy with a view to fly to Delhi but could not fly because, he came to know that the flight will touch Madras, where he thought a member of the Investigating Team of this case may be present that then he motored down to Bangalore and from there to Hyderabad and ultimately to Delhi, that he remained in Delhi for some days and then he flew to Bombay, that while in Delhi he was reported to have been in contact with the person with whom he had telephonic conversation when he was in Madras and that one of his associates present in Delhi was in contact with some persons in Cochin. The notes also show that it was discovered that one of the telephone numbers which was contacted from Delhi over Section T.D. was the private telephone number in Cochin of a fairly important police officer. No wonder, the 10th accused was successful in always keeping one step ahead of the Investigating Team. It would appear that it was not difficult for him to know beforehand the dangers awaiting him in the immediate future. If all these activities could take place even while the 10th accused was busily engaged in avoiding apprehension by the police, according to the learned Public Prosecutor, he would be capable of doing much more if he is released on bail, that is, when he becomes a completely free individual. The court is quite impressed by this submission. Obviously, his position as a well-known businessman, the contacts he has developed in various sectors of life and places the ability and skill which he has exhibited in keeping out of the police net for over a month, the hint that could be gathered from the fact that his aides have been in contact with the private telephone in Cochin of an important police official and other attending circumstances clearly show that he is a person, who is very likely to jump bail and also vigorously seek to thwart the course of public justice. To say that he will be in a position and will even attempt to tamper with evidence or win over witnesses is not merely a repetition of a usual argument, as discussed by the learned Counsel Sri Sukumaran Nair. It is not merely a possibility but a near certainty in this case.

18. The learned counsel, Sri Sukumaran Nair stated that Section 438 of the Code had been introduced in the Code of 1973 with a definite purpose and it would be consistent with that purpose if the 10th accused is granted anticipatory bail. The legislative purpose is obvious viz., to obviate situations where citizens are likely to be humiliated and harassed and process of law abused. There is no averment in the petition that if the 10th accused is taken into custody, he may be

subjected to physical or mental harassment. Of course, for any one to be taken into custody, would itself be an act of humiliation. But that by itself will not be sufficient to enable the court to hold that process of law is being abused and to grant anticipatory bail.

19. Anticipatory bail cannot be granted in all cases as a matter of course. The principles and standard which this Court should apply in a matter arising u/s 438 of the Code will also be applicable to a case arising u/s 439 of the Code. 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. Traditional crimes like those envisaged under the Indian Penal Code no longer occupy the pride of place in the crime atlas of the country. Misuse of social and economic power with a view to gather more and more wealth and with a view to make quick profit, is changing the pattern of crime to a considerable extent. In the olden days criminal courts had to deal mostly with crimes under the Indian Penal Code, individual offences or even group offences. But, today, new patterns of crime with mercenary motives have emerged. New Sections of people are coming out on the path of crime. They may be socially and economically powerful. They may be so powerful that they may successfully thwart the course of justice. They may be so powerful that some of them may be able to keep themselves away from the police net for a long time or even to win over and intimidate witnesses. All that will result in the course of justice being hampered. In such cases, I do not think, anticipatory bail should be granted as a matter of course. 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. Where the court is satisfied that grant of bail or anticipatory bail will seriously and adversely affect the investigation that is a sufficient reason to deny bail and even anticipatory bail. This, it appears to me, is one of those cases, where bail should not be granted.

20. In the light of the above discussion, I have to hold that the request for grant of anticipatory bail made on behalf of the 10th accused cannot be granted.

In the result, all the Criminal Miscellaneous Cases are dismissed.