

(2021) 02 KL CK 0097

In the High Court Of Kerala

Case No : Bail Application No. 8233, 8828, 8924 Of 2020

Nissar And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 25-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 120(B), 143, 147, 148, 149, 201, 212, 294(b), 307, 506(ii)

Arms Act, 1959 — Section 3, 7, 25(1)(B)(a), 27(2)

Citation : (2021) 02 KL CK 0097

Hon'ble Judges : Ashok Menon, J

Bench : Single Bench

Advocate : T.A. Shaji, Athul Shaji, Sanjana Rachel Jose, P.K. Varghese, Kk Sheeba, C.J. Varghese Vinu

Final Decision : Allowed

Judgement

1. Applications filed under Section 439 of the Cr.P.C.

2. The applicants in B. A. No. 8233/2020 are accused numbers 1 to 5, the applicant in B. A. No. 8828/2020 is the 7th accused while the applicants in

B. A. No. 8924/2020 are accused numbers 8 and 9 in Crime No. 1849/2020 of Perumbavoor Police Station for having allegedly committed offences

punishable under Sections 143, 147, 148, 294 (b), 506 (ii), 307, 212 and 201 read with Section 149 and Section 120-B of the Indian Penal Code and

under Section 3 r/w Sections 25 (1) (B) (a) and 7 r/w 27 (2) of the Arms Act.

3. Owing to the enmity between Adhil, and the 1st accused, Nissar, for having pestered Adhil's mother over phone and being questioned about it, the

1st accused hatched a conspiracy with the rest of the accused to murder Adhil. On 11/11/2020 at about 1:30 AM, at Palattuthazham Bhagom, in

Pallipuram Kara, accused 1 to 7 formed an unlawful assembly, committed riot armed with deadly weapons like a gun, sword sticks etc; intercepted

Adhil while he was engaging in a conversation with someone else, attempted to run over him with a car driven by A1, and thereafter, the 1st accused

shot at him using a pistol on his chest with the knowledge and intention to cause his death, caused hurt and thereafter, in prosecution of the common

object of the unlawful assembly accused 2 to 7 hacked him with the aforesaid dangerous and deadly weapons, and hurled abuses at him and

intimidated him. Applicants 8 and 9 attempted to harbour accused 1 to 7 soon after their committing the offence with the intention of screening them

from legal punishment and also to cause evidence of the commission of the offence to disappear.

4. Accused 1 to 5 were arrested on 11/11/2020 while the rest of the applicants were arrested on 13/11/2020. They continue on remand. The

applications filed by them before the jurisdictional Magistrate was dismissed on 17/11/2020. Accused 8 and 9 approached this Court for bail by filing

B. A. No. 7791 of 2020 but the same was dismissed on 25/11/2020. B. A. No. 8924/2020 is their 2nd application for bail. The other applicants are

approaching this Court for the first time.

5. The applicants state that the victim Adhil and his friends, more particularly a person named Mohammed Rinshad, are drug traffickers and drug

addicts. There are a number of criminal cases registered against them. It is stated that Adhil and the members of his gang were the aggressors and

had attacked the 1st accused while he was travelling in his brand new Toyota Fortuner car with A2, his brother. Adhil and his friends were armed

with dangerous weapons like swords and iron rods and they intercepted the car with their motorbikes and pelted stones at the car. A1 who was behind

the wheels, lost control of the car and the car dashed against the bucket of a JCB vehicle parked in the yard nearby. They ransacked the car and

damaged it completely. A1 was brutally assaulted. The pistol was also used by one among them and who had fired at A1 but the gunshot injury was

sustained by Adhil in the ruckus. It is stated that A1 has no connection with the pistol and that the allegation about A1 shooting at Adhil and the others

assaulting him as a result of the conspiracy that was hatched to commit murder is untrue and false. A1 had sustained an injury on his head and hands.

He called A8 and A9 for help over the phone and they immediately rushed to the scene of occurrence and took him to Little Flower Hospital,

Angamali. Fearing that they may be attacked again by Adhil and his friends, A1 did not insist on getting admitted to the hospital and got discharged

after he was given first aid. A1 to A3 had surrendered before the Police on 11/11/2020 and as insisted by the Police, A4 and A5 also surrendered on

the same day. The allegation that the accused were apprehended from Manjeri while they were on the run, is not true. Coming to know about A1

taken to the hospital, on 12/11/2020, Mohammed Rinshad, the companion of Adhil trespassed into the compound of the hospital with intend to attack

applicants 1 to 5. When the Police intervened, he did not even hesitate to assault them and deterred them from performing their duty. Thereupon,

narcotics, like hashish oil and heroin, were seized from the vehicle in which he was travelling. Crime No.1855/2020 was registered against him by the

Perumbavoor Police. The aforesaid incident would only substantiate the case of the applicants that Adhil and his friends were the aggressors. The

investigation is coming to a close and Adhil has already been discharged from the hospital after treatment and hence the accused seek bail.

6. A7 in his application for bail, B.A.No.8828/2020, completely disassociated himself with the occurrence. It is pointed out that the name of A7 does

not find a mention in the F.I. statement. The de facto complainant has identified only A1 to A3 by their names. It is stated that there were 4 other

persons wearing masks and therefore, the applicant has been implicated on surmises without any material. A7 was arrested from his home at Vallam.

This would indicate that he had no intention to abscond. He is willing to abide by any condition and therefore seeks bail.

7. A8 and A9 have filed successive applications for bail and have reiterated. It is stated that the earlier application was dismissed by this Court finding

that it was too early to release the applicants and that the source of the gun has to be investigated upon. It was also observed that A8 and A9 were

important part of the conspiracy. Since the investigation has progressed much, further detention of A8 and A9 may not be necessary and hence they

seek bail.

8. Learned Senior Counsel, Sri T.A. Shaji, instructed by Adv. Sri.Athul Shaji appeared for A1 to A5, A8 and A9. Advocate Ms.Sanjana Rachel Jose

appeared for A7. Adv. Vaghese Vinu appeared for the de facto complainant, who got himself impleaded as additional respondent. Public Prosecutor

Smt.K.K. Sheeba appeared for the State. Case diary and relevant records perused.

9. The learned Prosecutor has vehemently opposed the applications for bail stating that the applicants are involved in a grave crime using an

unlicensed pistol in contravention of the Arms Act. It is stated that the conspiracy has been sufficiently established. A1 had relationship with the

mother of the victim and was constantly pestering her over phone. The victim had admonished him. After this the 1st accused had hatched a

conspiracy to eliminate the victim with the help of others. The mobile tower locations of accused 1 to 9 indicate that all of them were present at the

scene of occurrence at the time when the assault took place. A7 had also accompanied A1 to A3 to the hospital at Angamali. A8 had contacted A1,

eleven times, A9, three times, A3, twice and A2 and A5 once each over the phone, on and about the time of occurrence. Similarly A1 had contacted

A8 eleven times over the phone on 10th and 11th of November 2020. A2 and A5 had called A8 over the phone, once each. A3 had sent four SMS

messages to A1. A7 had also called A9 over the phone, five times. This would indicate that the accused persons had constant interaction between

them in connection with the conspiracy and the crime. It is stated that the fact indicating towards the involvement of Rinshad in another crime is

inconsequential. Hence, the learned Prosecutor seeks dismissal of all the applications for bail.

10. It is admitted that the investigation has concluded and the final report has been filed by the investigating officer on 06/02/2021 and the same has

been taken on file of the jurisdictional Magistrate as C.P. 5 of 2021 and is pending committal proceedings. The nature of accusation and the severity

of punishment in case of conviction, and the nature of supporting evidence, reasonable apprehension of tampering of the witnesses or apprehension of

threat to the complainant and prima facie satisfaction of the Court in support of the charge are essential requirement while considering a bail

application. Apart from the seriousness of the offence, the likelihood of the accused fleeing from justice and his tampering with the prosecution

witnesses are both required to relate to ensure of the fair trial of the case. (See Gurcharan Singh and Others v. State [1978 KHC 461 : AIR 1978 SC

179] Sanjay Chandra v. CBI [2011 KHC 5051 : 2012 (1) SCC 40] and Kalyan Chandra Sarkar v. Rajesh Ranjan [2004 KHC 754 : 2004(7) BA 8233, 8828 & 8924/2020 13 SCC 528]].

11. Coming to the facts of this case, I find that the de facto complainant has already survived from the injuries he had sustained and there is no threat

to his life anymore. The weapons allegedly used by the applicants have been recovered. The applicants have been subjected to custodial interrogation.

They have been in custody for about hundred days. I find no reason for them to abscond or tamper with evidence. Under the circumstances, the bail

applications are allowed and the applicants are directed to be released on bail on execution of a bond for ₹ 50,000/- (Rupees fifty thousand only) each

with two solvent sureties for like amount each to the satisfaction of the jurisdictional Court, and on following conditions:

(i) They shall surrender their passports before the jurisdictional Court and shall not go abroad without seeking permission of the said Court.

(ii) They shall not tamper with evidence, intimidate or influence witnesses.

(iii) They shall not get involved in offences of similar nature during the currency of the bail.

(iv) They shall intimate their addresses and phone numbers to the investigating officer.

(v) They shall remain present before the Court on the dates fixed for hearing of the case, except with the prior permission of the Court in case of

unavoidable circumstances for remaining absent.

Breach of the above conditions would entail in cancellation of bail on an application being filed by the prosecution before the jurisdictional Court.