

(2022) 04 KL CK 0051

In the High Court Of Kerala

Case No : Criminal Appeal No. 344 Of 2022

Sainudheen

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 06-04-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 294(b), 302, 323, 506
Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(2)(v), 14A(1)

Citation : (2022) 04 KL CK 0051

Hon'ble Judges : Dr Kauser Edappagath, J

Bench : Single Bench

Advocate : Sanjana Rachel Jose, P.S.Anishad, K.R.Arun Krishnan, P.T.Manoj, Amrutha K P, Reghu Sreedharan, P.K.Varghese, K.S.Arun Kumar, Blaze K. Jose, Ambika Devi S, Urmila Zacharia, Akhila M, M.P.Prasanth

Final Decision : Allowed

Judgement

Dr.Kauser Edappagath, J

1. This appeal is filed u/s 14-A(1) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the order passed by the Sessions Court, Thrissur in CrI.M.C.No.395/2022 dated 23.03.2022 dismissing the application for bail filed under Section 439 of Cr.PC.

2. The petitioners are the accused. The 2nd respondent is the father of the deceased. The offences alleged are under Sections 323, 294(b), 506, 302 r/w Section 34 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

3. The prosecution case in short is that the deceased Deepu, a member of Schedule Caste, was an activist of an organisation namely Twenty Twenty. The petitioners are active members of political party namely CPI(M). It is alleged that the petitioners out of their political enmity towards the deceased attacked him on

12.02.2022 at 05.00 pm at Parappuram Colony at Chelakulam and assaulted him which resulted in fatal injuries and later on, he succumbed to the injuries at the hospital on 18.02.2022.

4. The petitioners moved an application for bail under Section 439 of Cr.PC at the Sessions Court, Ernakulam. As per the order of this Court, the said bail application was transferred to Sessions Court, Thrissur. The learned Sessions Judge, Thrissur, as per the order dated 23.03.2022, dismissed the said application. Challenging the said order, this appeal has been preferred.

5. Notice has been issued to the 2nd respondent. He entered appearance through counsel. I have heard Sri.P.K.Varghese, the learned counsel for the petitioners and Sri.Blaze K.Jose, the learned counsel for the 2nd respondent and also the learned Public Prosecutor, Sri.M.P.Prasanth.

6. The learned counsel for the petitioners Sri.P.K.Varghese submitted that there is a delay of three days in lodging the F.I.R and the cause of death shown by the deceased at the hospital was "due to fall" as evident from Annexure II. The learned counsel further submitted that, at any rate, the investigation is over and the final report has already been submitted and, as such, the further detention of the petitioners is not necessary.

7. The learned counsel for the 2nd respondent, Sri.Blaze K.Jose, submitted that it is a case where a youngster aged 29 years was brutally attacked and killed due to political rivalry and considering the seriousness of the crime attributed against the petitioners, they cannot be released on bail even though final report has been filed. The learned counsel further submitted that no reliance can be placed on Annexure II.

8. The learned Public Prosecutor submitted a detailed statement of facts prepared by the investigating officer. The Prosecutor submitted that inasmuch as the final report has already been filed, the detention of the petitioners is not required for the purpose of investigation. However, he argued that the seriousness of the crime may be taken into consideration while considering the question of granting bail.

9. I have perused the case records. At the time when the bail application was dismissed by the court below, the investigation was going on. Now, the investigation is over. It is submitted that the final report has been submitted on 02.04.2022 at the Principal Sessions Court, Ernakulam. Admittedly, no weapons were used by the petitioners. Even though the incident was on 12.02.2022, the deceased was taken to the hospital only on 14.02.2022 after vomiting the blood. The F.I.R was registered on 16.02.2022. The petitioners are in custody since 16.02.2022. The deceased died at the hospital on 18.02.2022.

10. Considering the fact that no weapon was used and that there is no serious external injuries as such and also considering the fact that the investigation is over and the final report has been submitted, I am of the view that the further

detention of the petitioners is not necessary. Moreover, none of the petitioners has any criminal antecedents.

In the result, this appeal is allowed and bail is granted to the petitioners on the following conditions:-

- (i) The petitioners shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One lakh only) each with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Magistrate/Court.
- (ii) The petitioners shall not commit any offence of like nature while on bail.
- (iii) The petitioners shall not make any attempt to contact any of the prosecution witnesses, directly or through any other person, or any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.
- (iv) The petitioners shall not leave State of Kerala without the permission of the trial Court.
- (v) The petitioners shall not enter into the jurisdiction of the police station where the 2nd respondent resides.