
(2021) 09 KL CK 0143
In the High Court Of Kerala
Case No : Bail Appl. No. 5868 Of 2021

Sessy Xavier

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 17-09-2021

Acts Referred:

Code of Criminal Procedure, 1973 — Section 438, 438(1)
Indian Penal Code, 1860 — Section 416, 417, 419, 420, 465, 468, 473
Advocates Act, 1961 — Section 24, 24(1)©, 25, 26, 45

Citation : (2021) 09 KL CK 0143

Hon'ble Judges : Shircy V, J

Bench : Single Bench

Advocate : Roy Chacko, Sreeja V, B Pramod

Final Decision : Dismissed

Judgement

Shircy V, J

1. One fine morning the Bar Association, Alappuzha received an anonymous letter alleging that the petitioner, a lady who is not a graduate in law and not enrolled as an Advocate before the Bar Council of Kerala, is practising in the Courts in the District. Then the Bar Association without delay decided in setting the law into motion by lodging a complaint. Pursuant to the complaint forwarded by the Bar Association, Alappuzha, Crime No. 474 of 2021 has been registered by the North Police Station, Alappuzha against the petitioner for having committed offences punishable under Sections 417, 419 and 420 of the Indian Penal Code. Apprehending arrest in connection with the said crime, the petitioner has approached this Court with this application under Section 438 of the Code of Criminal Procedure.

2. The prosecution case in a nutshell are as follows:

The petitioner is a native of Alappuzha. She was practising as a Lawyer in various courts at Alappuzha for the last two and a half years with the enrolment number

of another Advocate. She fraudulently approached the Bar Association, Alappuzha with enrolment number K/1177/2018, which belongs to an advocate of Thrivanathapuram and secured membership. She was regularly appearing before the various courts in Alappuzha District. She had also submitted applications before the civil courts and thus her name was also included in the panel of Commissioners and was appointed as Commissioner in so many cases. She has also appeared before the Sessions courts in certain sessions cases for the accused as State brief. Thus, she was actively and smoothly practising the profession as an Advocate attached to the Bar Association Alappuzha even without a law degree. After her admission as a member, she had contested the election of the Bar Association and was elected as an office bearer of the Association. On receipt of the anonymous letter, the association cross checked matter with the Bar Council of Kerala and then it was realized that the enrolment number used by the petitioner actually belongs to an Advocate of Thiruvananthapuram District and this petitioner had never enrolled as an Advocate before the Bar Council of Kerala. So, immediately an Executive Committee meeting was convened and an opportunity was given to her to offer her explanation by issuing a notice. Though the notice was served on her, there was no response. Thereafter, the Secretary of Bar Association had given the First Information Statement before the police. Pursuant to the same this crime has been registered against her before the Alappuzha North Police Station.

3. Heard Adv. Roy Chacko, the learned counsel for the petitioner, Adv. B. Pramod, the learned counsel for the additional 3rd respondent and Smt. Sreeja V, the learned Senior Public Prosecutor. Perused the records.

4. It is significant to note that the petitioner has put in black and white that she is not a law graduate. It is submitted by the learned counsel for the petitioner that as she lost some papers in the examination she did not complete her LL.B course and due to her poor financial circumstances at home she could not successfully complete her course. Then, she joined as a law Intern in the office of an Advocate at Alappuzha and attended courts regularly at Ramangiri and Alappuzha, but that was without wearing the attire of an Advocate. Later due to the compulsion of certain friends in the Bar Association at Alappuzha, she submitted nomination to contest the election of the Bar Association for the year 2020-2021. Though, she has not been admitted as a member of the Bar Association, her nomination was accepted and she won the election. In fact, she has not committed any offence as alleged by the prosecution. No offence is attracted so as to have her custody by the police to proceed with the investigation of the case, is the argument advanced on behalf of her.

5. Per contra, the learned Public Prosecutor strenuously opposed the application contending that the petitioner who has not even completed her graduation in law, committed cheating by impersonation by producing documents with the enrolment number of an Advocate of Thrivanathapuram and fraudulently obtained membership in the Association and thereafter started the profession of

an Advocate, as if she was enrolled as an Advocate before the Bar Council of Kerala. She regularly appeared before various courts at Alappuzha for about two and half years till filing of the complaint against her. She even contested cases before the Sessions Courts as State Brief and obtained orders from various Courts appointing her as Advocate Commissioner and submitted reports before the courts. According to the prosecution, in short she has cheated the District Judiciary, Advocates as well as the entire public and therefore the offences alleged against her are no doubt grave and serious in nature and the prosecution has to probe into the details so as to collect the entire materials to proceed with the investigation of the case with her in custody. Hence, granting of pre-arrest bail is vigorously opposed by the learned public prosecutor.

6. The Additional 3rd respondent, who is a member of the Bar Association, Alappuzha has been impleaded as per the order in CrI.M.A. No. 1 of 2021. He has also opposed the application with all vigour contending that the petitioner has played fraud on the entire legal fraternity by appearing before various courts with the enrolment number of another Advocate of Thiruvananthapuram. It is further pointed out by the learned counsel that she used to appear before the courts in the prescribed uniform of a lawyer and that the submission of the learned counsel for the petitioner that she never used the white bands and Advocates' gown is absolutely incorrect. She was actively participating in all activities of the Bar Association. She secured membership in the Association by producing false documents with the intent to deceive as she did not possess an enrolment certificate. The investigating agency has registered the case against her only under Sections 417, 419 and 420 of Indian Penal Code. But the offences committed by her includes offences under Sections 416, 465, 468 and 473 of Indian Penal Code as well as under Section 45 of the Advocates Act, 1961.

7. I have considered the rival submissions of the parties in detail. The petitioner is a young lady aged only 27 years. It is an admitted fact that she has not even completed her course in LL.B, though she was a student at Law Academy Law College at Thiruvananthapuram for a short period. She has not obtained a degree in Law. As mentioned above the definite case of the petitioner is that she never appeared as an Advocate or attended the courts as an Advocate wearing the uniform prescribed for a lawyer. But she joined only as a law intern in the office of an Advocate at Alappuzha. Apparently the said contention appears to be a falsehood by Annexure R3(a), the copy of a judgment in Sessions Case No.489 of 2013 disposed of by the learned Additional Sessions Judge-III, Alappuzha on 03.03.2021. Annexure. R3(a) indicates that this petitioner had appeared and contested as the defence lawyer for the accused Nos. 1 to 5, who faced trial before the Additional Sessions Court- III, Alappuzha. Annexures R3(b) and R3(c) are the news items published regarding the acquittal of those accused by the learned Additional Sessions Judge in the above referred case. In the news item also her name is seen mentioned as the Advocate who appeared for the accused. Annexure R3(d) is the notice published by her when she contested the election to the Bar Association, soliciting support and help from the members of the Bar

Association. In that notice also, her name is shown as "Adv. Sessy Xavier". As admitted by her in her statement, she won the election as an office bearer of the Bar Association for the year 2020-2021 and thus turn out to be a member of the Executive Committee of the Advocates Association of Alappuzha.

8. Before proceeding further, it is useful to refer to certain provisions of the The Advocates Act, 1961 (for short 'the Act'). The Act deals with the law relating to legal practitioners which extend to the whole of India. Section 24 of the Act deals with the provision where persons are admitted as Advocates on a State roll. Section 24 (1) (c) says that a person who has obtained a degree in law is qualified to be admitted as an Advocate, if he fulfills the conditions narrated therein. Section 25 deals with the authority to whom an application for enrolment has to be submitted. Section 26 deals with disposal of an application for admission as an Advocate. Therefore, only a person holding a Law Degree is entitled to get his name enroled in the roll as an Advocate and only after enrolment as an Advocate, one could practise the profession of law as an Advocate as reflected in Section 29 and 30 of the Act. Here, admittedly, this petitioner is not holding a degree in law and so she never enroled as an Advocate before the Bar Council of Kerala, till date.

9. But as mentioned earlier, prima facie it appears that she got admission as a member of the Bar Association by furnishing the enrolment number of an Advocate of Thiruvananthapuram. Only the members of the Bar Association can contest an election and she contested the election and was successful in her attempt.

10. After obtaining membership in the Bar Association, she appeared before the various courts in Alappuzha district as an Advocate. Advocates are permitted to represent or even appear before a court of law only in uniform. Her case that she had only joined the office of a Senior Advocate as law intern appears to be a false statement as revealed from the records made available before this court.

11. Here, the main question that falls for determination is whether she is entitled to get an order of pre-arrest bail in the case. The learned counsel for the petitioner has pointed out that she being a member of a poor family, out of her immaturity and lack of wisdom appeared in the courts and contested the election of the Bar Association as her nomination was accepted by the Association. She only joined as a law intern attached to the office of a senior lawyer and she never functioned as a lawyer and so her custodial interrogation is not at all required, is the definite stand of the learned counsel for the petitioner.

12. In *Dataram Singh v. State of Uttar Pradesh* ((2018) 3 SCC 22) cited by the learned counsel for the petitioner the Apex Court observed as under :

"..... A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty....."

Further, it is observed that

".....Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception....."

"4. To put it shortly, a humane attitude is required to be adopted by a Judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody....."

13. The decision of the Supreme Court in *Nathu Singh v. State of Uttar Pradesh and Ors. Ompal Singh v. State of Uttar Pradesh and Ors.* (AIR 2021 SC 2606) has also been relied on by the learned counsel to argue that the petitioner is entitled for pre-arrest bail as it was observed by Apex Court while referring to the power under Section 438 Cr.P.C in paragraph 25 as follows:

"25. However, such discretionary power cannot be exercised in an untrammelled manner. The Court must take into account the statutory scheme under Section 438 Cr.P.C., particularly, the proviso to Section 438(1) Cr.P.C. and balance the concerns of the investigating agency, complainant and the society at large with the concerns/interest of the applicant. Therefore, such an order must necessarily be narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating authority. Such an order must be a reasoned one."

14. It is well settled that while considering an application for bail the court has to take into consideration the nature and gravity of the accusation levelled against the accused, the larger interest of the public, reasonable apprehension of tampering with the evidence, likelihood of absconding etc. In the instant case, prima facie, the petitioner has not only cheated the Bar Association, Alappuzha, the District judiciary of Alappuzha, the general public, but also the entire Judicial system. As observed above, she is not a law graduate and she never enrolled as an advocate before the Bar Council of Kerala, but clandestinely produced the enrolment number of another Advocate and the said number was exhibited by her as her roll number in all her activities as an Advocate before the courts in Alappuzha District and fraudulently used that number for various purposes as if she had enrolled as an Advocate with the roll number. Doubtless that the gravity of the offences alleged against her is grave and serious in nature. Offences alleged is all the more grave as she committed fraud on the Courts and Judicial system. The allegations leveled against her are highly serious and sensitive having grave repercussions in the society. The illegal activities adopted by her that too before the court of law has to be dealt with an iron hand. If leniency is taken, just considering the fact that she is a young lady, it will be a shame for the whole Judicial system and would shake the confidence of the public in judicial system.

15. The Lawyers' profession is considered to be one of the noblest profession.

Lawyers have to play a pivotal role in the administration of justice as only with their sincere and purposeful effort and assistance the Courts could administer justice properly. They owe onerous responsibility and duty towards Courts and they are considered as the officers of the Courts. Their first responsibility is towards their clients and then to the courts. So, misrepresenting or presenting as an Advocate before a client and obtaining his/her brief as if she is an Advocate, itself would amount to cheating towards the public. As observed above, prima facie the materials so far gathered by the investigating agency indicate that, she has cheated the Bar Association Alappuzha, the clients approached her with brief, the entire judiciary especially the District judiciary, Alappuzha and the general public.

16. It is prima facie evident that she had submitted an application before the Bar Association with the enrolment number of another Advocate for admission as a member of the Association. The minimum requirement to become a member of a Bar Association is to hold a Law Degree and then enrolment as an Advocate before the Bar Council, as

Bar association is the association of Lawyers. Here, prima facie, it is clear that this petitioner is not having any such qualification and she had deceived the Bar Association, Alappuzha by submitting a document fraudulently and with dishonest intention secured the membership. After obtaining the membership in the Bar Association, she started to appear before the court of law and continued the same for the last two and a half years and also contested in the election held by the association and elected as an office bearer. As she functioned as the librarian of the Bar Association she was in charge of the records of the association. At this juncture, I would like to add that it is always advisable that the Bar Associations before admitting a new member to cross check and verify with the Bar council, so that such incidents can be prevented in future.

17. As per the FI Statement of the informant, the application submitted by her for admission before the association was also found missing from the records along with some other applications submitted on the same day. The investigating agency has to trace out the same along with the other required documents. From the materials so far collected, it could be seen that there is a strong case against this petitioner to be proceeded with. The investigating agency is supposed to go deep into all those matters by exercising their skill so as to ascertain what are the offences committed by this petitioner apart from the offences she has been booked by the prosecution. In fact, I find merit in the argument advanced by the learned counsel for the 3rd respondent that apart from the offences for which she has been booked as such, the illegal activities committed by her makes out some more offences under the Indian Penal Code as well offences under the Advocates Act, 1961. To probe into those details, definitely custodial interrogation of this petitioner appears to be essential and inevitable. If she is granted bail, the possibility to abscond also cannot be ruled out. The argument of the learned counsel for the petitioner that she is coming from a poor financial

situation and a young lady or she is immature etc are not at all justifiable reasons or grounds to exercise the discretion of this Court under Section 438 of the Code of Criminal Procedure in her favour. It is well settled by a plethora of decisions of the Supreme Court that the discretion of the court must be exercised with care and circumspection, depending on circumstances justifying its exercise. More so law applies to everyone equally. She has to surrender before the investigating officer forthwith or else she has to be arrested to proceed with the investigation of the case. Therefore, I find that this petition deserves a dismissal and I prefer to do so.

Dismissed.