

(2023) 06 KL CK 0168
In the High Court Of Kerala
Case No : Bail Application No. 3450 Of 2023

Shaiju V.V.

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 14-06-2023

Acts Referred:

Indian Penal Code, 1860 — Section 302, 326
Evidence Act, 1872 — Section 27

Citation : (2023) 06 KL CK 0168

Hon'ble Judges : Ziyad Rahman A.A., J

Bench : Single Bench

Advocate : Ajeesh M Ummer, Akshai M. Sivan, C.S.Hrithwik

Final Decision : Dismissed

Judgement

Ziyad Rahman A.A., J

1. The Petitioner is the accused in Crime No.12/2023 of Kalady Police Station. The offences alleged against the petitioner are under sections 326 and 302 of the Indian Penal Code (IPC).

2. The prosecution case is that, on 4.1.2023 at about 1.30 p.m., with the intention to commit murder, the petitioner stabbed the victim, who was none other than his wife, with a knife, on her left breast and thus committed the murder of her. The motive of the murder was alleged to be his suspicion about the chastity of the victim and also that she denied sexual intercourse with the petitioner on some occasions. The petitioner was arrested in connection with the investigation of the said case on 5.1.2023.

3. Even though the petitioner submitted an application for bail before the Sessions Court, the same was dismissed as per the order dated 24.4.2023. The investigation is already completed, and the final report was submitted on 31.3.2023. The matter is now pending as C.P.No.14/2023 before the Judicial First Class Magistrate Court-IV, Perumbavoor. This application for regular bail is

submitted in such circumstances.

4. Heard Sri. Ajeesh M. Ummer, the learned counsel for the petitioner and Sri.C.S.Hrithwik, the learned Public Prosecutor for the State.

5. The learned counsel for the petitioner submits that the petitioner has not committed any offence as alleged by the prosecution. The materials placed on record are not sufficient to establish the role of the petitioner in the commission of the crime. It is also pointed out that, in the year 2015, he sustained a severe head injury in an accident, consequent to which, he had mood changes. Therefore, it is pointed out that no acts were intentionally committed by the petitioner. Besides the same, it is also pointed out that there are nobody to look after the two daughters of the petitioner who are studying in the 9th and 10th standards. Since the final report is already submitted, there is no purpose in keeping the petitioner under detention any longer. The counsel submits that the petitioner is prepared to abide by any conditions that may be imposed by this Court.

6. The learned Public Prosecutor would stoutly oppose the prayer for bail. According to him, this is a gruesome murder committed by the petitioner. The materials placed on record would indicate that, even before committing the murder of his wife, the petitioner, on various occasions, assaulted the victim as she objected to the sexual perversions of the petitioner. It is further pointed out that there are sufficient materials in the form of depositions of a number of witnesses and other scientific evidence indicating that it was the petitioner who committed the murder. Moreover, most of the witnesses cited by the prosecution to establish the crime are either relatives or neighbours of the petitioner and victim. If he is released on bail, they are likely to be intimidated or influenced. The safety of the children is also at stake. Therefore, the dismissal of the application was sought in such circumstances.

7. I have gone through the records produced along with the bail application and the case diary made available by the learned Public Prosecutor. On perusal of the case diary, it is revealed that most of the witnesses, who are either relatives or neighbours of the petitioner and victim, have clearly described the manner in which the petitioner used to treat the victim until her death. The mother, sister and some of the neighbours of the victim have clearly deposed that the petitioner was a person who was unreasonably proactive as far as the sexual desires are concerned, and whenever the victim objected sexual intercourse, the petitioner used to assault her by making comments about her chastity. He used to insist for sex, even at the times when the victim was not physically and mentally fit for such intercourse. The statement of the mother of the victim would reveal that the victim was forced to have sexual intercourse with the petitioner within days after undergoing the delivery of the child through cesarean. Several instances of brutal attack on the victim for objecting to having sex on some occasions were cited by the mother and the sister of the victim.

8. Moreover, CW8 and CW9 who reached the spot upon hearing the hue and cry of CW24 have clearly stated that, when they reached, the petitioner was present there. The records would indicate that, the petitioner had called the ambulance and the victim was admitted in Little Flower Hospital, Angamali. It is also discernible that the reason for sustaining the injuries to the victim was reported by the petitioner to various persons differently. Initially, he informed CW1 over phone that the victim suffered injuries when she fell down in her house and her head hit on the floor. He conveyed to CW7 that, while the victim was cutting grass, she fell on the scissors and thereby sustained injuries. While admitting the hospital, the petitioner informed CW53 that the injuries suffered to her upon she falling over a knife while she was cleaning the house. Thus, the petitioner had given inconsistent versions regarding the manner in which the injuries were sustained by the victim, to various persons.

9. In addition to the above, the weapon and the blood-stained dhoti, which was worn by the petitioner at the relevant time, were recovered from a place where it was concealed in the residence of the petitioner, based on a confession statement given by him under section 27 of the Evidence Act.

10. When all the aforesaid aspects are taken into consideration, there are sufficient materials to form a prima facie opinion that it was the petitioner who committed the murder of the victim. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* [(2010)14 SCC 496], the Hon'ble Supreme Court mentioned about the factors to be borne in mind while considering an application for bail, they are:

"(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail."

Similarly, in *Ram Govind Upadhyay v. Sudarshan Singh* [(2002)3 SCC 598], it was observed that the following considerations are to be taken into

account while granting or rejecting bail:

"(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered, and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

11. I have carefully considered the materials placed before me in the light of the principles and guidelines laid down by the Hon’ble Supreme Court in the above-referred decisions. There cannot be any doubt as to the seriousness of the allegations and also the severity of punishment in this case. When coming to the question of the prima facie satisfaction of the Court as to the commission of the crime committed by the petitioner, I have already discussed the materials produced by the prosecution to establish the prima facie case, in the earlier part of this order. There are adequate materials to establish a prima facie case. When coming to the question of the possibility of tampering with the evidence and influencing the witnesses, I find some force in the contention put forward by the learned Public Prosecutor in this regard. As observed above, most of the witnesses are the persons, either neighbours or close relatives of the petitioner and the victim. Among the witnesses, two daughters of the petitioner are also there. In such circumstances, the chances that, the petitioner may influence or intimidate the said witnesses are very high. Moreover, the safety of the children is also one of the concerns, which is also a relevant factor while taking a decision in the matter. The learned counsel for the petitioner vehemently contended that there is nobody to look after the children and, therefore his release is essential. However, it is learned that, at present, the children are in a hostel and they are being looked after properly by the family of the victim. Similarly, the learned counsel for the petitioner highlighted certain medical grounds, I do not find it as any justifiable and sufficient reason to grant bail to the petitioner discarding the materials placed before me.

12. Thus, when considering the entire facts and circumstances of the case as mentioned above and other relevant criteria as stipulated by the Hon’ble Supreme Court in the matter of taking a decision as to whether bail is to be granted or not, I am of the view that this is not a fit case in which the bail can be granted to the petitioner. Indeed, the investigation in this case is already over and the final report has been submitted. However, this is a case in which the offence alleged is punishable with the death penalty or imprisonment for life. Therefore, special reasons have to be shown to release the petitioner on bail and the release of the petitioner cannot be ordered under normal course. In this

case, even after examining the entire materials placed before me, including the case diary, I am unable to find any convincing reason that compels this Court to take a decision to grant bail to the petitioner. On the other hand, there are several reasons, as highlighted above, that prompt this Court to reject the application for bail.

In such circumstances, I do not find any merit in this application, and accordingly it is dismissed.