

(2024) 01 KL CK 0094

In the High Court Of Kerala

Case No : Bail Application Nos. 11257, 11284 Of 2023

Yadhu Krishnan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 12-01-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 124, 143, 147, 149, 283, 353
Prevention of Damage to Public Property Act, 1984 — Section 3(2)(e)

Citation : (2024) 01 KL CK 0094

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

**Advocate : K.K.Dheerendrakrishnan, N.P.Asha, Neema.T V, Seetha.S, C.S
Hrithwik**

Final Decision : Allowed

Judgement

C.S.Dias, J

1. "It is a malady in our country that political parties allure young students through their student wings. They do so because it is an easy method for enlisting support and participation of student population in their political programmes. Students, particularly in the adolescent age, are easily swayed by political parties without much effort or cost as young and tender minds are susceptible to easy persuasiveness by party leaders. Tender minds get galvanised on minor issues, frenzy flares up even on trivialities, young children and adolescents unaware of the disastrous consequences befalling their own future indulge in vandalism, mayhem and killing spree against their own fellow students. We think that the time is now ripe for legislative interference to salvage the campus free of political activities. We leave it to the members of legislatures and leaders of the country to ponder over this with the seriousness it deserves and to bring forth necessary measures to plug it"

: observed the Hon'ble Supreme Court in Harpal Singh v. Devinder Singh [(1997)

6 SCC 660].

2. On December, 11th 2023, the convoy of the Governor of Kerala was impeded in Palayam, Thiruvananthapuram, by the accused 1 to 7 and 10 identifiable persons owing allegiance to a political party, in prosecution of their common object, by forming themselves into an unlawful assembly and disobeying the orders of the police, detained the Governor of Kerala and shouted slogans at him, waved black flags and damaged his vehicle incurring a loss of Rs.76,357/- to the public exchequer. Thus, the accused have committed the offences punishable under Sections 124, 143, 147, 149, 283, 353 of the Indian Penal Code, and Section 3 (2) (e) of the Prevention of Damages to Public Property Act is the gist of the prosecution case in Crime No.1338 of 2023 of the Cantonment Police Station, Thiruvananthapuram City. The petitioners in these bail applications are the accused, 1 to 7, who were arrested from the scene of occurrence. They have been in judicial custody since 11.12.2023.

3. Heard; Sri. K.K.Dheerendrakrishnan and Sri.Nandagopal S.Kurup, the learned counsel appearing for the petitioner and Sri.C.S.Hrithwik, Smt. Neema T.V and Smt.Seetha.S, the learned Public Prosecutors.

4. The learned counsel for the petitioners submitted that the petitioners are innocent of the accusations levelled against them. By no stretch of imagination will the offence of Section 124 of the Act be attracted to the facts of the case. The provision has been deliberately incorporated to harass the petitioners. The petitioners are students in their 20s pursuing their graduation and post-graduation courses in various disciplines at the University of Kerala. The petitioners have been incarcerated for the last month. They have no criminal antecedents. The investigation in the case is practically complete, and there is nothing more to be recovered. They are willing to cooperate with the investigation and abide by any stringent condition that this Court may impose. Hence, the petitioners may be released on bail.

5. The learned Public Prosecutors strenuously opposed the applications. They submitted that the investigation is in progress. Some of the accused are still at large. The petitioners have committed heinous offences by waylaying the Executive Head of the State. The student outfits are causing law and order problems across the State by obstructing VIP cavalcades. The police are on their toes all the time. The public coffers are being unnecessarily drained to avert any untoward incident. The applications may be dismissed.

6. I have perused the case diary and the materials on record.

7. The Governors are the Executive Head of the States as enshrined under Article 154 of the Constitution of India. The Governors are provided with Z-plus security cover considering their eminent constitutional position, the duties they discharge and the risks associated with their esteemed office. It is in this context that Section 124 is embedded in the Indian Penal Code, which reads as follows:

"124. Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power- Whoever, with the intention of inducing or compelling the[President] of India, or the [Governor of any State, to exercise or refrain from exercising in any manner any of the lawful powers of suchPresident or Governor],

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such [President] or [Governor],

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine".

8. The provision exhibits the concern of the Parliament to safeguard the Executive Heads of the Nation and the States to enable them to carry out their lawful powers.

9. Viewed in the above legal framework, the prosecution allegation is serious and grave.

10. In the crucible of student activism, driven by fervent political ideologies, a sudden rush of blood may propel the minds of a few into impulsive action of vandalism, rioting, hooliganism and crime. But this impulsiveness often overlooks the potential consequences, and by the time the harsh reality sets in, they might find themselves languishing in prison. To prevent such outcomes, addressing the underlying causes is crucial by creating spaces for constructive dialogue and promoting a change in the mindsets of the persons at the helm of affairs. Despite the passage of two and a half decades, the observations in Harpal Singh's case to bring forth necessary measures remains a dead letter. The less said, the better.

11. Malala Yousafzai famously said, "Education is the best weapon through which we can fight poverty, ignorance and terrorism".

12. Unfortunately, this weapon loses its sheen when it gets tainted with criminal misconduct and vandalism. Students must embrace the power of knowledge to construct and not to destroy. Let the students be harbingers of positive change, be the architects of the future, and not be known for the wrong reasons.

13. Considering the youthful immaturity, the political ideologies and the promising future of the petitioners, this Court had an online interaction with the petitioners and their parents in the presence of the counsel and the public prosecutors. The petitioners assured this Court that they would regularly attend their classes, obey their parents, and undergo counselling to transform their attitude and mindset.

14. After bestowing my anxious consideration to the peculiar facts of the case and materials on record, particularly the fact that the petitioners have been in judicial custody for one month, the investigation in the case is practically complete, and no recovery is to be effected, I am convinced that the petitioners

are entitled to be released on bail but subject to stringent conditions including, to attend their classes regularly and obey their parents.

In the result, the applications are allowed, by directing the petitioners to be released on bail on each of them executing a bond for Rs.25,000/- (Rupees twenty-five thousand only) with one of their parents as their surety who shall also execute a bond each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

(i) The petitioners shall jointly deposit an amount of Rs.76,357/- (Rupees Seventy Six Thousand Three Hundred and Fifty Seven only) before the jurisdictional Court, as per the directions of this Court in Hemachandran M.T @ Kamalesh and others vs. Sub Inspector of Police and another [2011 (4) KHC 689].

(ii) The petitioners shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m. for a period of two months or till the final report is laid, whichever is earlier;

(iii) The petitioners shall not directly or indirectly make any inducement, threat or procure to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;

(iv) The petitioners shall not commit any offence while they are on bail;

(v) The petitioners shall surrender their passports, if any, before the court below at the time of execution of the bond. If they have no passport, they shall file affidavits to the effect before the court below on the date of execution of the bond;

(vi) The petitioners shall not leave Thiruvananthapuram District without the permission of the jurisdictional court.

(vii) The petitioners shall attend their classes regularly and produce their attendance sheets issued by the Registrar of their Institutions before the jurisdictional court quarterly.

(viii) The petitioners shall obey their parents and attend counselling classes as suggested by their parents. The parents would be at liberty to contact the Member Secretary, District Legal Services Authority for any assistance in this regard, who is directed to render the necessary assistance that may be required, including to arrange for counselling.

(ix) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

(x) Applications for deletion/modification of the bail conditions shall be moved

and entertained by the court below.

(xi) Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioners even while the petitioners are on bail as laid down by the Hon'ble Supreme Court in *Sushila Aggarwal v. State (NCT of Delhi)* and another [2020 (1) KHC 663].

(xii) It is clarified that the courts dealing with the case, shall decide the case on its merits and in accordance with law, untrammelled by any observation made in this order, which is made only for the sole purpose of considering the bail applications.

Let the order be a reminder to the students that the reformatory path would be in store if they indulge in similar offences as alleged in these cases.