The State Of Kerala vs Mahesh on 19 March, 2021

Equivalent citations: AIR 2021 SUPREME COURT 2071, AIRONLINE 2021 SC 205

Author: Indira Banerjee

Bench: Krishna Murari, Indira Banerjee

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 343 OF 2021
(Arising out of SLP (Crl.) No.1530 of 2021)

AND

INTERLOCUTORY APPLICATION NOS. 24659 AND 41412 OF 2021

THE STATE OF KERALA .…Appellant (s

Versus

MAHESH ….Respondent (s)

JUDGMENT

Indira Banerjee, J.

Leave granted.

2. This Appeal filed by the State of Kerala is against an order dated 21st December 2020 passed by the High Court of Kerala granting bail to the Respondent, accused of a heinous and shocking murder of a lady doctor aged about 30 years.

3. It is the case of the Prosecution that on 28 th September 2020 at about 3.30 p.m., the Respondent Accused stabbed the victim, with a knife, inside a multispeciality dental clinic, run by the victim at

Kuttanellur. The victim succumbed to her injuries at Jubilee Mission Hospital on 4th October, 2020.

4. As per the case of the Prosecution, the victim met the Respondent Accused after her divorce from her erstwhile husband. The victim and the Respondent Accused became close and started living together from 2018 onwards. The victim became pregnant, but the Respondent Accused forced her to undergo an abortion, by threatening her.

5. The deceased victim had, as per the case of the Prosecution, started the Multispeciality Dental Clinic, with financial support from her father. The Respondent Accused misappropriated money from the clinic and also harassed the victim, both physically and mentally. In the circumstances, the victim was constrained to separate from Respondent Accused and start living at her own house. As the Respondent Accused continued to threaten the victim, the victim had, along with her father, filed a complaint with the City Police Commissioner, Thrissur on 26 th September, 2020.

6. The victim was called to the Ollur Police Station for a settlement and thereafter to her dental clinic on 28 th September 2020 at 3.30. p.m. The Respondent Accused stabbed the victim with a knife on the right side of the stomach, in the presence of her father, at the dental clinic.

7. An FIR was lodged at the Ollur Police Station, Thrissur on 28th September 2020, under Sections 341, 324 and 307 of the Indian Penal code (IPC), pursuant to which Crime No. 1777/2020 of Ollur Police Station was started. However, after the death of the victim, Section 302 was added and an Inclusion Report to that effect was filed in the Jurisdictional Court. The crime as stated above has been registered under Sections 341, 324, 201, 212, 307 and 302 of the IPC. The Respondent Accused was arrested on 6th October, 2020.

8. A Bail application filed by the Respondent Accused in the Sessions Court was dismissed by an order dated 9th December, 2020 with the following findings:-

> "12. In view of the settled position as laid down by the Apex court, while considering an application for bail, the court has to exercise the discretion in a judicious manner with care and caution, though at this stage elaborate examination of evidence and detailed reasoning touching the merit of the case is not required. But there is need to indicate in the order the reasons for the prima facie conclusion why bail is not granted. Prime facie satisfaction of the court in support of the charge alone is sufficient for the court to arrive at a conclusion as to whether the petitioner is entitled to get an order of bail. From the materials on record as revealed from the case diary, it could be seen that the petitioner had reached the clinic with a knife and after the culmination of the discussion, he had attacked the deceased and inflicted very serious stab injury and caused damages to her internal vital organs. After committing the crime, the petitioner had absconded and he could be apprehended only on 06.10.2020 on receiving secret information by the investigation agency regarding the arrival of the petitioner at Poonkunnam. After committing the crime, the petitioner had abandoned his car and got himself absconded and kept himself away from the

vicinity of the police with the aid of his brother, worker and a friend.

There is merit in the objection raised by the police regarding the possibility of the petitioner absconding from appearing before court.

13. The next objection raised by the prosecution is that since the deceased is a resident of Ernakulam and all prosecution witnesses are hailing from Thrissur, there is likelihood of the petitioner causing influence on the prosecution witnesses. This is a valid ground to decline the release. The brutality of the crime committed by the petitioner in causing multiple stab injuries on the abdomen of the victim also has to be taken into account. The investigation agency could collect sufficient evidence to incriminate the petitioner in the crime. On consideration of the entire facts and circumstances, it is found that there are reasonable grounds to arrive at a conclusion that granting of bail to the petitioner would adversely affect the prosecution from adducing evidence in support of the charge and hence the petitioner is found not entitled to get an order of release."

9. On 14th December 2020, the Respondent Accused filed the bail application being B.A. No.8821 of 2020 in the High Court under Section 439 of the Cr.P.C. The prayer for bail was strongly opposed by the Public Prosecutor who argued that, if released, the Respondent Accused would influence witnesses many of whom were his close relatives, friends and acquaintances.

10. The High Court has however, granted bail to the Respondent Accused, by the order impugned in this appeal, notwithstanding the opposition of the Public Prosecutor, overlooking the materials on record, which prima facie indicate that the Respondent had committed cold blooded murder of a young lady doctor, as a fall out of a soured relationship. The relevant part of the impugned order set out hereinbelow:-

> "7. After hearing both sides, I think this Bail Application can be allowed on stringent conditions. It is true that the allegations against the petitioner are very serious and the incident now put forward by the prosecution is so heinous. But the petitioner is in custody from 6.10.2020 onwards. The Public Prosecutor also submitted that the second and third accused were not arrested. But it is a matter to be considered that the petitioner is in custody from 6.10.2020 onwards. Indefinite incarceration of the petitioner may not be necessary in the facts and circumstances of this case. But the apprehension of the prosecution is also to be taken care of. In such circumstances, there can be a direction to the petitioner not to enter the jurisdictional limit of Ollur Police Station till the investigation in this case is over."

11. As stated above, the Incident took place in the presence of the victim's father, who is an eye witness to the incident. The unfortunate father has filed an application for intervention being Interlocutory Application No. 41412 of 2021, and has supported the appeal against the order impugned.

12. In the said application, being I.A No.41412 of 2021 for intervention, the unfortunate father has contended that the Respondent Accused came to the dental clinic with a knife, which clearly showed

that he had a preplanned plot to kill the victim. The manner in which the Respondent Accused stabbed the victim on her stomach, and inflicted injuries on her, which is corroborated by the post-mortem report, clearly shows intention to cause death. He has also stated that according to the Doctors it was medical miracle that the victim survived four to five days, even though she was in complete coma all through.

13. Attacking the impugned order of the High Court, Counsel appearing on behalf of the Appellant supported by Counsel appearing on behalf of the father of the victim, being the applicant in I.A. No. 41412 of 2021 in this Special Leave Petition, has argued that the Respondent Accused had committed the gruesome murder of a young woman in the presence of her father, who was an eye witness to the incident. The High Court should have declined the prayer for bail on that ground alone. The impugned order granting bail to the Respondent Accused, notwithstanding the gravity of the offence, is devoid of cogent reasons, justifying the grant of bail to the accused. The High Court neither considered nor elaborate reasons given by Sessions Court in the order directing bail to the Accused Respondent. It is submitted that restraining the Respondent Accused from entering the jurisdictional limit of Ullur Police Station till the investigation was over, would not prevent the Respondent Accused from influencing or threatening witnesses.

14. The Respondent Accused has appeared before the Court through Ms. Liz Mathew, Advocate and filed a Counter Affidavit to the Special Leave Petition. Significantly, the Respondent has admitted the incident but stated that "During the discussion, verbal altercation arose between the parents of the deceased and the defacto complainant who accompanied the deceased victim. A scuffle took place and unfortunately the deceased victim had sustained injury. The Respondent had no intention or preparation to commit any offence."

15. On behalf of the Respondent Accused, it has been argued that the impugned order of the High Court is well reasoned. The High Court found that the Respondent Accused was in custody from 6th October 2020 onwards. Indefinite incarceration of the Respondent Accused was found not necessary. Counsel appearing for the Appellant submitted that the bail application has been allowed on stringent conditions. Counsel emphasized on the conditions imposed by the impugned order restraining the Respondent Accused from entering the jurisdictional limit of Ollur Police Station, till the main witnesses in the case were examined by the Trial Court. She also emphatically argued that bail once granted should not be cancelled in a mechanical manner without considering whether there were supervening circumstances which would render the bail no longer conducive to a fair trial.

16. It is well settled that though the power to grant bail under Section 439 of the Cr.P.C is discretionary, such discretion has to be exercised judiciously, as held by this Court in Ram Govind Upadhyay v. Sudarshan Singh and Ors. reported in (2002) 3 SCC 598. Speaking for the Court, Umesh Chandra Banerjee, J. said:-

> "3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however,

that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(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."

17. In Prasanta Kumar Sarkar v. Ashis Chatterjee and Anr. reported in (2010) 14 SCC 496, D.K. Jain, J., speaking for a two-Judge Bench of this Court laid down the principles for examining the correctness of orders granting bail to an accused. This Court held:-

> "9. ...It is trite that this Court does not, normally, interfere with an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting or rejecting bail to the accused.

However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail 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.

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10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non- application of mind, rendering it to be illegal."

18. In Mahipal v. Rajesh Kumar and Anr. reported in (2020) 2 SCC 118, this Court held:-

"14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding."

19. The Respondent Accused relied on the judgments of this Court in Sanjay Chandra v. Central Bureau of Investigation reported in (2012) 1 SCC 40 and Siddharam Satlingappa Mhetra v. State of Maharashtra and Ors. reported in (2011) 1 SCC 694, where this Court observed that seriousness of the charge is not test or factor while considering the application for bail.

20. In Sanjay Chandra (supra), the accused were charged with economic offences of huge magnitude which could jeopardize the economy of the country. This Court held:-

"21.In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

24. In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of

Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice".

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. ....."

21. In Siddharam Satlingappa Mhetra (supra) rendered in the context of the discretion to grant anticipatory bail under Section 438, this Court advocated the need to balance individual personal liberty with societal interest. This Court held:-

"84. Just as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important."

22. There is no straight jacket formula for grant or refusal of bail. Seriousness of the charge is undoubtedly one of the relevant considerations while considering bail applications as held in Sanjay Chandra (supra) cited on behalf of the Respondent Accused. All the relevant factors have to be weighed by the Court considering an application for bail, including the gravity of the offence, the evidence and material which prima facie show the involvement of applicant for bail in the offence alleged, the extent of involvement of the applicant for bail, in the offence alleged, possibility of the applicant accused absconding or otherwise defeating or delaying the course of justice, reasonable apprehension of witnesses being threatened or influenced or of evidence being tempered with, and danger to the safety of the victim (if alive), the complainant, their relatives, friends or other witnesses.

23. Counsel for the Respondent Accused finally argued that this Court does not ordinarily entertain a petition for Special Leave to Appeal against an order granting or refusing or cancelling bail or anticipatory bail. Investigation in this case has been concluded and chargesheet has been filed on 1st January 2021.

24. In Jagdish and Ors. v. Harendrajit Singh reported in (1985) 4 SCC 508, cited on behalf of the Respondent Accused, this Court held that, this Court does not ordinarily, in exercise of its discretion under Article 136, entertain petition for Special Leave to Appeal against orders granting or refusing or cancelling bail or anticipatory bail. There can be no dispute with the proposition.

This Court does not ordinarily interfere with an order granting or refusing bail in exercise of its power under Article 136 of the Constitution. However, the practice of not interfering with orders granting and/or refusing bail is not unexceptionable. An order granting or refusing bail without application of mind and in disregard of relevant factors, cannot be allowed to stand.

25. Counsel argued that the Respondent Accused had been granted bail on 21st December 2020 that is almost three months ago, but has not interfered with the course of administration of justice in any way. Nor has the Respondent Accused evaded or attempted to evade the due course of justice. Learned counsel argued that the Respondent Accused had been in judicial custody for 75 days. The investigation was over and continued detention of the Respondent Accused was no longer necessary.

26. Relying on the judgment of this Court in P. Chidambaram v. Directorate of Enforcement reported in 2020 (13) SCC 791, Counsel submitted that this Court had repeatedly highlighted the proposition that bail was the rule and jail the exception.

27. Citing the judgment of this Court in Dolat Ram and Ors. v. State of Haryana reported in (1995) 1 SCC 349, it was submitted that the Respondent Accused having been granted bail, by the impugned order dated 21 st December 2020, this Court should not deprive him of his personal liberty, without considering whether there were any supervening circumstances which had rendered the freedom of the Respondent Accused to bail, inexpedient for fair trial.

28. In Dolat Ram (supra), this Court held:-

> "4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are:
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> interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

29. In this Appeal the correctness of the impugned order of the High Court, in granting bail to the Respondent Accused is in question. The exercise of appellate jurisdiction to adjudge correctness of a bail order are not restricted by the principles for cancellation of bail. As held by this Court, speaking through Dr. D.Y. Chandrachud J. in Mahipal v. Rajesh Kumar (supra):-

> "16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse,

illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In Neeru Yadav v. State ofU.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , the accused was granted bail by the High Court [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] . In an appeal against the order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J. (as the learned Chief Justice then was) held: (Neeru Yadav case [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , SCC p. 513, para 12) "12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court."

17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment."

30. Counsel appearing for the Respondent Accused, has also cited Prabhakar Tewari v. State of U.P. and Anr. reported in (2020) 11 SCC 648 where this Court, speaking through Aniruddha Bose J. has discussed the scope of appellate interference to set aside an order granting bail. In Prabhakar Tewari (supra), this Court held:-

"6. In Mahipal v. Rajesh Kumar, (2020) 2 SCC 118, a coordinate Bench of this Court has discussed the scope of jurisdiction of the appellate court in setting aside an order of granting bail. The two key factors for interfering with such an order are non-application of mind on the part of the court granting bail or the opinion of the court in granting bail is not borne out from a prima facie view of the evidence on record. In Mohd. Amir Rashadi v. State of U.P. (2012) 2 SCC 382, a two-Judge Bench of this Court declined to interfere with an order [Rama Kant Yadav v. State of U.P.,

2010 SCC OnLine All 3388] of the High Court granting bail to an accused having considered the factual features of that case."

31. The High Court has also relied on the judgment of this Court in P. Chidambaram (supra) reported in (2020) 13 SCC 791 cited on behalf of the Respondent Accused. There could be no quarrel with the proposition of law laid down in the cited judgment. A.S. Bopanna, J. speaking for a three judge Bench held:-

> "23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case- to-case basis on the facts involved therein and securing the presence of the accused to stand trial."

32. In P. Chidambaram (supra), this Court allowed the appeal from the order of the High Court, and allowed the prayer of the Appellant for bail, having regard to the facts and circumstances of the case noted by this Court, which are extracted hereinbelow:-

> "28. Therefore, at this stage while considering the bail application of the appellant herein what is to be taken note of is that, at a stage when the appellant was before this Court in an application seeking for interim protection/anticipatory bail, this Court while considering the matter in Criminal Appeal No. 1340 of 2019 had in that regard held that in a matter of present nature wherein grave economic offence is alleged, custodial interrogation as contended would be necessary and in that circumstance the anticipatory bail was rejected. Subsequently, the appellant has been

> taken into custody and has been interrogated and for the said purpose the appellant was available in custody in this case from 16- 10-2019 onwards. It is, however, contended on behalf of the respondent that the witnesses will have to be confronted and as such custody is required for that purpose.
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> 29. As noted, the appellant has not been named as one of the accused in the ECIR but the allegation while being made against the co-accused it is indicated the appellant who was the Finance Minister at that point, has aided the illegal transactions since one of the co-accused is the son of the appellant. In this context, even if the statements on record and materials gathered are taken note of, the complicity of the appellant will have to be established in the trial and if convicted, the appellant will undergo sentence. For the present, as taken note of, the anticipatory bail had been declined earlier and the appellant was available for custodial interrogation for more than 45 days. In addition to the custodial interrogation if further investigation is to be made, the appellant would be bound to participate in such investigation as is required by the respondent."

33. In this case, the impugned order of the High Court is flawed, in that the High Court noted the seriousness of the offence alleged, observed that the incident was heinous, but proceeded to grant bail to the Respondent Accused on the purported ground that he had been in custody since 6 th October 2020 (that is, about 75 days) without even considering the materials on record which prima facie made out reasonable grounds to believe that the Respondent Accused had committed the heinous offence. At that stage, even the chargesheet had not been filed. The High Court did not apply its mind to the severity of the punishment in the event of conviction, or the fact that the accused had been absconding after the incident.

34. As argued on behalf of the Appellant, supported by the applicant for intervention, being the hapless parent of the victim, the High Court has neither considered nor discussed the elaborate reasons given by the Sessions Court in its order rejecting the prayer of the Respondent Accused for bail. The impugned order of the High Court does not advert to any error in the reasoning of the Sessions Court. Nor is there any discussion of the reason why the High Court took a view different from that taken by the Sessions Court – whether there were any supervening circumstances within 10/12 days of the order of the Sessions Court, which necessitated a different view.

35. The High Court, in our opinion, clearly erred in not appreciating that the apprehension of the Prosecution that the Respondent Accused would influence witnesses, could not be put to rest, by directing the Respondent Accused not to enter the jurisdiction of Ollur Police Station. The High Court completely ignored the fact that the deceased victim used to reside at Ernakulam. Her parents and her five years old daughter reside at Ernakulam. In other words, the only eye witness is a resident of Ernakulam. Most of the Prosecution witnesses were from Thrissur. There was no reason to suppose that the witnesses would restrict their movements to the limits of the jurisdiction of Ollur Police Station.

36. It further appears from the impugned order that, in granting bail to the Respondent Accused, the High Court took note of the fact that two other accused persons had not been arrested. The High Court completely ignored the fact that these two accused persons were not named in the FIR. They were charged after investigation with offence under Section 212, of harbouring the Respondent Accused, punishable with imprisonment for a maximum period of five years, unlike the Respondent Accused, charged with murder under Section 302 of the IPC, which entails minimum punishment of imprisonment for life.

37. There can be no doubt that the outbreak of the novel COVID-19 pandemic and its spread has been a matter of serious public concern. The virus being highly infectious, precautions to prevent spread of infection to the extent possible are imperative. In Suo Motu Writ Petition (Civil) No.1 of 2020 In Re : Contagion of Covid 19 Virus In Prisons, this Court expressed concern over the possibility of spread of COVID-19 amongst prisoners lodged in overcrowded correctional homes and accordingly issued directions from time to time, directing the authorities concerned to inter alia take steps as directed by this Court, to minimize the risk of spread of COVID amongst the inmates of correctional homes. This Court also directed that a High Powered Committee be constituted by the States and Union Territories to consider release of some prisoners on interim bail or parole during the Pandemic, to prevent overcrowding of prisons.

38. It appears that the High Court has completely mis- appreciated the object, scope and ambit of the directions issued by this Court from time to time in In Re : Contagion of Covid 19 Virus In Prisons. This Court did not direct release of all under-trial prisoners, irrespective of the severity of the offence. After hearing the learned Attorney General of India, Mr. Venugopal, the Amicus Curiae appointed by this Court, Mr. Dushyant Dave and other Learned Counsel, the States and Union Territories were directed to constitute a High Powered Committee to determine which class of prisoners could be released on parole or interim bail for such period as might be thought appropriate. By way of example, this Court directed the States/Union Territories to consider release of prisoners convicted of minor offences with prescribed punishment of seven years or less. The orders of this Court are not to be construed as any direction, or even observation, requiring release of under-trial prisoners charged with murder, and that too, even before investigation is completed and the chargesheet is filed. The Respondent Accused, it is reiterated, is charged with murder in the presence of an eye witness, and the impugned order granting bail was filed even before the chargesheet was filed. The Chargesheet appears to have been filed on 01.01.2021. Moreover the Respondent Accused had been absconding after the incident.

39. For the reasons discussed above the Appeal is allowed and the impugned order of the High Court is set aside. The Respondent Accused shall be taken into custody.

40. A copy of this order shall be sent to the concerned Police Station as well as the Jurisdictional Chief Judicial Magistrate for compliance.

41. Pending application(s), if any, shall stand disposed of.

.....J. [INDIRA BANERJEE] .....J. [KRISHNA MURARI] NEW DELHI;

MARCH 19, 2021.

ITEM NO.24 Court 10 (Video Conferencing) SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.)No.1530/2021 (Arising out of impugned final judgment and order dated 21-12-2020 in BA No. 8821/2020 passed by the High Court Of Kerala At Ernakulam) THE STATE OF KERALA Petitioner(s) VERSUS MAHESH Respondent(s) (FOR ADMISSION and I.R. and IA No.24659/2021-EXEMPTION FROM FILING O.T. & IA 41412/2021 – FOR INTERVENTION) Date : 19-03-2021 This petition was called on for hearing today. CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE HON'BLE MR. JUSTICE KRISHNA MURARI For Petitioner(s) Mr. Nishe Rajen Shonker, AOR For Respondent(s) Mr. Raghenth Basant, Adv.

Ms. Rasna Kalkat, Adv.

Ms. Liz Mathew, AOR Mr. Jaimon Andrews, Adv.

Mr. Piyo Harold Jaimon, Adv.

Mr. Sandeep Thakur, Adv.

Mr. Naresh Kumar, AOR UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed reportable judgment.

Pending application(s), if any, shall stand disposed of.

(NIRMALA NEGI) (MATHEW ABRAHAM)
COURT MASTER (SH) COURT MASTER (NSH)

(Signed reportable judgment is placed on the file)