

Manojkumar S vs State Of Kerala on 6 November, 2024

Author: C.S.Dias

Bench: C.S.Dias

2024:KER:82537

B.A No.7421/2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS
WEDNESDAY, THE 6TH DAY OF NOVEMBER 2024 / 15TH KARTHIKA, 1946
BAIL APPL. NO. 7421 OF 2024
CRIME NO.1337/2024 OF Peroorkada Police Station,
Thiruvananthapuram

PETITIONER/ACCUSED:

MANOJKUMAR S,
AGED 48 YEARS
S/O. SIVANANDAN NAIR ,PADMAVIHAR,TC 3/2488 MGRA
257,UPPER MEDIUM ROAD,PATTOM THIRUVANANTHAPURAM,
PIN - 695004

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
PRERITH PHILIP JOSEPH
ANILKUMAR C.R.
K.S.KIRAN KRISHNAN

RESPONDENT/STATE:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA, PIN - 682031
- 2 STATION HOUSE OFFICER,
PEROORKADA POLICE STATION, (CRIME NO. 1337/2024 OF
PEROORKADA POLICE STATION, THIRUVANANTHAPURAM
DISTRICT, PIN - 695005

OTHER PRESENT:

SR.P.P.SMT.SEETHA.S

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
21.10.2024, THE COURT ON 06.11.2024 PASSED THE FOLLOWING:
2024:KER:82537

B.A No.7421/2024

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C.S.DIAS, J

B.A No.7421 of 2024

Dated this the 6th November, 2024

ORDER

The application is filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, (in short 'BNSS') for an order of pre-arrest bail.

2. The petitioner is the sole accused in Crime No.1337/2024 of the Peroorkada Police Station, Thiruvananthapuram, which is registered against him, for allegedly committing the offences punishable under Sections 105 and 351(3) of the Bharatiya Nyaya Sanhita, 2023 (in short BNS).

3. The prosecution case, in brief, is that: on 2.9.2024, at 8:30 hours, the accused had an argument with the de facto complainant's father named John Paul (deceased) regarding the construction of a compound wall of their houses near the Devi temple at Muttada. The accused knowing that the deceased was a heart 2024:KER:82537 patient and that any attack would accelerate the death of deceased, abused and pushed the deceased on his chest, and placed a chopper on the deceased's neck. On seeing the chopper, the deceased collapsed. Even though the deceased was rushed to the Sree Chithira Thirunal Institute of Medical Sciences and Technology, he was declared dead at 10:30 hours. Thus, the accused has committed the above offences.

4. Heard; Sri.S.Rajeev, the learned counsel appearing for the petitioner and Smt.Seetha.S.,the learned Public Prosecutor.

5. The learned counsel for the petitioner strenuously argued that the petitioner is innocent of the accusations levelled against him. By no stretch of imagination can the offence under Sec.105 of the BNS be attracted to the facts of the case. The deceased, who was a heart patient, had suffered a cardiac arrest and died. A perusal of the inquest report and the post- mortem certificate would reveal that the deceased had 2024:KER:82537 not suffered any bodily injuries. Even going by the prosecution allegation, the petitioner only pushed the deceased which can never lead to the death of a person. The Investigating Officer has falsely stated the petitioner attacked the deceased with the chopper. The Investigating Officer has deliberately incorporated Section 105 of the BNS, to see that the petitioner is arrested and incarcerated. Even though the deceased has a house near the petitioner's house, he has leased the house and is residing far away from the said place. The petitioner had no contact with the deceased. An unanimous decision was taken by the people of the locality to widen the road. While the widening was taking place, the deceased interfered in the same, which led to the altercation. The petitioner had not touched the deceased. The petitioner was unaware that the deceased had any cardiac problem. It is only on reading the newspaper that the

petitioner got the news regarding the death of the deceased and he had a 2024:KER:82537 cardiac problem. The petitioner is a law abiding citizen without any criminal antecedents. The petitioner is willing to co-operate with the investigation and abide by any stringent condition that may be imposed by this Court. Hence, the application may be allowed.

6. The learned Public Prosecutor seriously opposed the bail application. She submitted that there are incriminating materials to substantiate the petitioner's culpability in the crime. The petitioner has absconded after the incident. The chopper used to threaten the deceased is yet to be recovered. The investigation is only at a nascent stage. If the petitioner is granted an order of pre-arrest bail, there is a likelihood of the petitioner fleeing from justice. It would also send a wrong message to the society. The petitioner was very much aware that the deceased was a heart patient. The petitioner's custodial interrogation is necessary and recovery is to be effected for the proper investigation of the crime. Therefore, the bail application 2024:KER:82537 may be dismissed.

7. The prosecution allegation is that, the petitioner and the deceased had a wordy altercation regarding the construction of a compound wall. Then, petitioner got agitated and he abused the deceased in obscene language, placed a chopper on the neck of the deceased and threatened him. The petitioner also pushed the deceased. The deceased suffered a shock and he collapsed. Although, the deceased was rushed to the Sree Chithira Thirunal Institute of Medical Sciences, he was declared dead.

8. The prosecution contention is that, the petitioner knew that the deceased was a heart patient, and in the attack, he accelerated the illness of the deceased, who suffered a cardiac arrest and died. Nonetheless, the prosecution does not have a case that it was due to any injury that was inflicted by the petitioner that the deceased lost his life.

9. On the contrary, the petitioner's contention is 2024:KER:82537 that he was unaware that the deceased had a cardiac problem. It is only on reading the newspaper that he came to learn that the deceased lost his life due to heart failure. As there is an animosity between the petitioner and the deceased's family, regarding the widening of the road and the construction of the compound wall, the de facto complainant has influenced the Investigating Officer to incorporate Section 105 of the BNS, to ensure that the petitioner is arrested and incarcerated.

10. I have perused the case diary and the materials placed on record.

11. On a prima facie appreciation of the post- mortem certificate dated 3.9.2024 of the Directorate of Medical Education, Thiruvananthapuram, it is certified that the deceased lost his life due to occlusive coronary artery disease. It is also certified that the deceased had suffered three ante-mortem injuries namely: (i) Linear abrasion 6 cm long on the back of the right arm, 4 cm below tip of shoulder, (ii) Linear abrasion 2.5 cm long on 2024:KER:82537 the back of the right arm, 1.5 cm above injury No.(i), and

(iii) Linear abrasion 7 c.m long on the outer aspect of right arm, 13 cm below tip of shoulder.

12. On a careful scrutiny of the certificate and the injuries seen on the deceased, prima facie, I find that the said injuries are not caused by the use of any weapon, but may be due to the altercation that occurred at the alleged place of incident. But these are matters to be decided after trial.

13. In the context of the case on hand, it is apposite to extract Section 105 of the BNS, which reads as follows:

105. Punishment for culpable homicide not amounting to murder.-- Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years and with fine, if the act is 2024:KER:82537 done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death

14. On a literal understanding of the Section 105 of the BNS, it is evident that the provision is of two parts. The first part would apply where the accused caused death to the victim with an intention to cause bodily injury as is likely to cause death and the second part comes into play when death is caused by doing any act under the knowledge that it is likely to cause death, but without an intention to cause death or to cause such bodily injury as is likely to cause death. The relevant criteria to attract the above offence is intention or knowledge with which act the death was caused. The intention to cause death or knowledge that the death will probably be caused is imperative.

15. While interpreting an analogous provision under Section 304 of the Indian Penal Code, the Hon'ble Supreme Court in Virsa Singh v. State of Punjab [AIR 2024:KER:82537 1958 SC 465] has held as follows:

"23. ... The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the

prisoner intended to inflict the injury in question.

24. It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he 2024:KER:82537 did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact. ..."

16. In *Chamru, Son of Budhwa v. State of Madhya Pradesh* [AIR 1954 SC 652], the Hon'ble Supreme Court, in somewhat similar circumstances to the facts of the case on hand, held that where there was exchange of abuses between the two parties, both of whom were armed with lathis, they came to blows and in the course of the fight that ensued, the accused struck a lathi blow on the head of the deceased which caused a fracture of his skull and resulting in the death. In view of the fact that the accused had given only one blow in the heat of the moment, it was held that all that can be said was that he had given the blow with the knowledge that it was likely to cause death and, therefore, the offence fell under S.304, Part II of the IPC.

17. In a trailblazing judgment in *Anbazhagan v. State* represented by the Inspector of Police [2023 INSC 632], the Hon'ble Supreme Court, 2024:KER:82537 after referring to a plethora of decisions on a subtle distinction between culpable homicide and murder, has succinctly laid down the law as follows:

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of S.300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of S.300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of S.300 of the IPC render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of S.300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of S.304 of the IPC, if the case of the accused is such as to fall within Clauses (1) 2024:KER:82537 to (3) of S.300 of the IPC. It would be offence under Part II of S.304 if the case is such as to fall within Clause (4) of S.300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of S.299 of the IPC, may be attracted but not any of the clauses of S.300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under S.304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of S.299, while it would be an offence under Part II of S.304 if the case fall within 3rd part of S.299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in S.299 of the IPC it is punishable under the first part of S.304. If, however, it falls within the third clause, it is punishable under the second part of S.304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to S.300 of the IPC, are fulfilled and the offence would be murder. (5) S.304 of the IPC will apply to the following classes of cases: (i) when the case falls under one or the other of the clauses of S.300, but it is covered by one of the exceptions to that Section,

(ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of S.300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death. To put it more succinctly, the difference between the two parts of S.304 of the IPC is that under the first part, the crime of murder is first established 2024:KER:82537 and the accused is then given the benefit of one of the exceptions to S.300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of S.304 of the IPC, the accused need not bring his case within one of the exceptions to S.300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say

that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

XXXXX XXXX XXXXX "

(emphasis given)

18. On an evaluation of the peculiar facts and circumstances of the instant case, the materials placed on record, and the law referred to in the aforecited precedents, especially on prima facie finding that the petitioner had not assaulted the deceased with any weapon and the deceased had not suffered any bodily injury, and it is certified that the deceased lost his life due to a cardiac arrest, I am of the firm view that the petitioner has made out valid grounds to invoke the discretionary jurisdiction of this Court under Sec.482 of 2024:KER:82537 the BNSS. The allegation that petitioner has committed an offence under Section 105 of the BNS will have to stand the scrutiny of trial.

19. In the light of the aforementioned reasons, I hold that the petitioner is entitled to an order of pre- arrest bail. Hence, I am inclined to allow the bail application, but subject to stringent conditions:

(i) The petitioner is directed to surrender before the Investigating Officer within ten days from today.

(ii) In the event of the arrest of the petitioner, the Investigating Officer shall release the petitioner on bail on him executing a bond for Rs.1,00,000/- (Rupees Two Lakh only) each with two solvent sureties for the like amount each;

(iii) The petitioner shall appear before the Investigating Officer for interrogation, as and when directed by the Investigating Officer.

(iv) The petitioner 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 2024:KER:82537 to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;

(v) The petitioner shall surrender his passport before the jurisdictional court concerned within a period of one week from the date of their release on bail. If he has no passport, he shall file an affidavit to the effect before said court within the said period;

(vi)The petitioner shall not get involved in any other offence while on bail;

(vii) 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.

(viii) Applications for deletion/modification of the bail conditions shall also be filed before the court below.

(ix) 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 petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in 2024:KER:82537 Sushila Aggarwal v. State (NCT of Delhi) And another [2020 (1) KHC 663].

(x) The observations made in this order are only for the purpose of considering the application and the same shall not be construed as an expression on the merits of the case, which is to be decided by the competent Courts.

ma/05.11.2024

Sd/- C.S.DIAS, JUDGE

2024:KER:82537

APPENDIX OF BAIL APPL. 7421/2024

PETITIONER ANNEXURES

Annexure I	A COPY OF THE FIR IN CRIME NO 1337/2024 OF PEROORKADA POLICE STATION DATED 02.09.2024
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