Muraleedharan vs State Of Kerala on 18 April, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1699

Bench: K.T. Thomas, R.P. Sethi

CASE NO.:
Appeal (crl.) 507-510 of 2001

PETITIONER:
MURALEEDHARAN

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT: 18/04/2001

BENCH:
K.T. Thomas & R.P. Sethi

JUDGMENT:

THOMAS, J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T..J The appellant who was described by the investigating agency as one of the kingpins in a series of grave crimes including the offence under Section 8 of the Kerala Abkari Act (For short the Act) found it easy to secure orders of anticipatory bail in all those cases from the Sessions Judge, Pathanamthitta. But the High Court of Kerala, within a month, reversed those orders of the Sessions Judge as per an order passed by a learned Single Judge which is sought to be impugned in this Court. These appeals by special leave are intended for that purpose. After hearing learned counsel for the appellant we did not think the necessity to hear the arguments of the counsel for the respondent State of Kerala. Hence we proceed to dispose of these appeals on the strength of the arguments of the appellant.

A number of criminal cases were registered sequel to the large scale deaths of persons in what is now known as the liquor tragedy in Kollam District (Kerala). A larger number of persons have been permanently incapacitated in the episodes. Arrested persons in connection with such cases remain in jails as bail has not been granted to them. Appellant apprehended that he would also be arrested

in connection with some of those cases, if not in all. Hence, while remaining absconding, he approached the Sessions Court, Pattanamthitta, for benefiting him with a pre-arrest bail order. He got what he desired. The Sessions Judge who granted the order of anticipatory bail found from the investigation records that there are reasons to presume that appellant would also be implicated as an accused in the case. The serious objections raised by the Public Prosecutor in the Sessions Court did not have any impact on the Sessions Judge which is discernible from the flippant reasoning adopted by him for granting the pre-arrest bail order.

According to the Sessions Judge no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused. He also observed that I do not think that any prejudice will be caused to the prosecution in the event of granting anticipatory bail especially when the petitioner has not so far been arrayed as an accused in the case.

It is disquieting that a Sessions Judge has chosen to adopt such inane reasoning for granting anticipatory bail in cases involving offences for which the legislature has imposed stringent restrictions even in regard to the grant of regular bail.

One of the offences involved is Section 8(2) of the Act which is punishable with imprisonment for a term which may extend to ten years and a fine which shall not be less than Rupees one lakh. Section 41A of the Act says that no person accused of an offence punishable for a term of imprisonment for three years or more shall be released on bail or on his own bond unless:

> (1) the Public Prosecutor or the Assistant Public Prosecutor, as the case may be, has been given an opportunity to oppose the application for such release, and (2) Where the Public Prosecutor or the Assistant public prosecutor, as the case may be, opposes an application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail.

The above provision is in pari materia with Section 37 of the Narcotic Drugs and Psychotropic Substances Act. This Court has held, time and again, that no person who is involved in an offence under that Act shall be released on bail in contravention of the conditions laid down in the said Section. (vide Union of India vs. Ram Samujh and anr. [1999 (9) SCC 429]. If the position is thus in regard to an accused even after arrest, it is incomprehensible how the position would be less when he approaches the court for pre-arrest bail knowing that he would also be implicated as an accused. Custodial interrogation of such accused is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the persons which ultimately led to the capital tragedy. We express our reprobation at the supercilious manner in which the Sessions Judge decided to think that no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused. Such a wayward thinking emanating from a Sessions Judge deserves judicial condemnation. No court can afford to presume that the investigating agency would fail to trace out more materials to prove the accusation against an accused. We are at a loss to understand what would have prompted

the Sessions Judge to conclude, at this early stage, that the investigating agency would not be able to collect any material to connect the appellant with the crime. The order of the Sessions Judge, blessing the appellant with a pre-arrest bail order, would have remained as a bugbear of how the discretion conferred on Sessions Judges under Section 438 of the Cr.P.C would have been misused. It is heartening that the high Court of Kerala did not allow such an order to remain in force for long. By the impugned order passed by the learned Single Judge of High Court an unwholesome benefit wangled by the appellant was rightly reversed.

The appeals are dismissed.