

Kerala High Court

State Of Kerala vs M.K. Pyloth on 1 December, 1972

Equivalent citations: 1973 CriLJ 869

Author: K Bhaskaran

Bench: K Bhaskaran

ORDER K. Bhaskaran, J.

1. This petition by the State, presumably under Section 498 (2) of the Code of Criminal Procedure, is for the cancellation of bail granted by the Sessions Court to the respondent herein. the 17th accused in the case hereinafter referred to as "the accused" for the sake of brevity.

2. On 23.9.1972. at about 9.15 p.m.. a person stated to be a leader of a political party was murdered. Later, in the night. on the same day, another person who it is stated, was a worker of a rival party also was murdered. This is the prosecution case.

3. However, in the second case (with which alone we are concerned in this petition), though the incident is alleged to have taken place in the early hours of 24.9.1972. FIR was registered only on 25.9.1972. Even then the in-visitation could not make much headway for a few days. It was only on 2.10.1972 that the first two witnesses were questioned by the police. Three accused persons were arrested on 3.10.1972 and another three on 4.10.1972.

4. The accused-respondent, on 5.20.1972, appeared before the Magistrate, and moved an application for bail. The learned Magistrate refused to grant bail considering that it was beyond her jurisdiction. Later, on the same day the accused moved the Sessions Court and obtained an interim order of bail. Ultimately the matter was heard on 10.10.1972 by the Sessions Court. On 11.10.1972 the Sessions Judge passed an order granting bail to the accused subject to certain restrictions regarding his right of movement. In this petition, the State challenges the correctness of the orders passed by the Sessions Court on 5.10.1972 and 11.10.1972 and prays that the bail that has been granted may be cancelled.

5. The main ground urged before me by the learned State Prosecutor is that in granting the bail the Sessions Court did not follow the provisions contained in Sections 497 and 498 of the Code of Criminal Procedure. It is submitted that the Sessions Court had no discretion to grant bail where the offences, as in the present case, fall under Sections 120B, 149 and 302 of the Indian Penal Code. According to the State Prosecutor, in the context of granting bail distinction has to be drawn among the three classes of offences, namely (1) boailable offences 12 non-boailable offences in which the Court may in its discretion errant bails and (3) non-boailable offences in which there appear reasonable grounds for believing that the accused has been guilty of an offence punishable with death or imprisonment for life. The argument is that, where the offence falls under Section 302, I.P.C. the Court has no discretion in the matter and has no power to release the accused on bail. In support of his contentions the State Prosecutor has invited my attention to the decision of the Supreme Court in the State v. Jagjit Singh . The submission is that the Supreme Court had found fault with the High Court for having granted bail to an accused who was alleged to have committed an offence under Section 3 or 5 of the Official Secrets Act and that being so. there is absolutely no

justification for grant of bail in a case like this where the offences are under Sections 120B, 149 and 302 of the I.P.C.

6. It is true that in terms of Sub-section (1) of Section 497 of the Code the Court shall not release an accused if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. However, whether there are reasonable grounds or not for believing that he has been guilty of an offence punishable with death or imprisonment for life is a matter to be decided judiciously by the Court. Merely because it is stated by the police that the person before the Court is an accused in a case falling under Section 302, I.P.C. the Court will not be justified in at once refusing bail to that person. The Court has both a right and a duty to satisfy itself whether there are reasonable grounds for believing that the accused has involved himself in an offence punishable with death or imprisonment for life. If the Court chooses to accept the Police report without applying its mind and examining the materials placed before it, the Court will be failing to discharge its statutory duty under the Code.

7. There cannot be any hard and fast rule in the matter of granting or re-fusing bail with reference to the offences under which the crime is registered. The case of each accused has to be considered on its own merit. Though the sections under which the case is registered may have some bearing, that cannot certainly be the dominant consideration.

8. Before ordering remand or extension of remand, the Court has to satisfy itself on an examination of the materials placed before it that there are reasonable grounds for doing so. The Court's duty is to see that a person's liberty is not unnecessarily curtailed or interfered with. The learned State Prosecutor has advanced an argument that the Sessions Court did not comply with the statutory requirement by not examining the case diary to satisfy itself why there was sufficient material for refusing bail to the accused. The grievance is that the Sessions Court arrived at its conclusion on a perusal of the remand report dated 4.10.1972. It is stated that the remand report dated 4.10.1972, was not submitted with reference to the accused (respondent herein), and that report was submitted in the absence of the officer who was conducting the investigation, by another officer who was not fully acquainted with the progress of the investigation and the materials collected up to that stage. According to the State Prosecutor, instead of basing its decision on the remand report dated 4.10.1972, the Sessions Court ought to have overused the case diary and satisfied himself whether there was sufficient ground for granting bail. Reliance is placed on the wording of Sub-section (1) of Section 167, Cri.P.C. which runs as follows:

...the officer in charge of the police station...shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

In this case the provisions of Section 167 do not strictly apply inasmuch as this is not a case where the police had produced the accused for remand. Apart from that, I do not think that the provision of Section 167(1) cast any statutory duty on the Court to peruse the case diary for satisfying itself whether the accused has to be remanded or not.

9. The expression "the entries in the diary hereinafter prescribed relating to the case" appearing in Section 167(1) of the Code has to be read and understood in the context of the provisions contained in Section 172. From the wording of Sub-section (1) of Section 172 it appears that the diary contemplated under that section has really two parts: (1) relating to the steps taken during the course of the investigation by the police officer with particular reference to time at which the police received the information, the time at which the police officer began and closed the investigation. the place or places visited by him etc., and (2) a statement of the circumstances ascertained through his investigation. The second part appears to relate to the statements recorded by the police officer in terms of Section 161 of the Code and other matters relevant in trial. As per Sub-section (2) of Section 172, the criminal Court is entitled to send for the police diary of a case under enquiry or trial in such Court and may use such diary, not as evidence in the case but to aid in such enquiry or trial. To my mind it appears that this police diary mentioned in Sub-section (2) of Section 172, Cri.P.C. really refers to the diary of the first category as indicated by me above, the copies of which need not be furnished to the accused under Section 173(4) of the Code. I am adverting to these aspects in order to see whether the Court is bound to look into the case diary and satisfy itself whether there is a case for the grant of bail or not, as contended by the learned State Prosecutor. The learned State Prosecutor was not in a position to show any provision in the Code which requires the Court to examine the case diary file to satisfy itself whether or not there is a case for the grant of bail. Even assuming that Section 167 has any relevance to this case I am of the opinion that what the Court is bound to consider are the copies of entries in the diary transmitted to the Court at the time of forwarding the accused, not the case diary file as such. If in the instant case, on 4.10.1972 the police did not furnish the entries in the case diary as required under Section 167 (1) of the Code., they alone have to be blamed for the lapses. The State Prosecutor has cited before me the Division Bench ruling of this Court in *Re Raman Velus* case 1972 Ker LT 922 and short notes on the decision of this Court in *Velayudhiankutty Nair v. State of Kerala* 1970 Ker LT (SN) 41. I do not think that these decisions go to law down that the Magistrate should peruse the case diary file. I do not therefore, find any merit in the contention (if the State Prosecutor that in not examining the case diary, to arrive at a conclusion as to whether or not there is a case for the grant of bail, the Sessions Court has failed to conform to the provisions of the Code in that behalf.

10. The remand report dated 4.10.1972 to which reference is made by the Sessions Court, reads as follows:

The investigation so far made has disclosed that A1, A3, A4, A14, A16, formed into an unlawful assembly picked the deceased from the public road at Aranattukara in a car KLR 7931 at about 12.30 on 23.9.1972 with the common object of assaulting and ascertaining the details of the murder of Sri Azhikodan Raehavan, which took place a few hours prior to this occurrence, brought him to the office of the Marxist Party at West Fort and under the directions of A13 and A17. accused Nos. 3, 4, 5, 6, 8, 9, 10, 14 and 16 beat, listed and kicked the deceased with the hands and legs, accused Nos. 1, 2, 7, 8, 11, 12 and 15 lifted the deceased from the above said office to the taxi car KLR 7931, A2 drove the car to Mullurkaval and with the intention of causing the death of the deceased Davis tied both legs, and hands and threw him into the kayal and there by committed the murder of Davis.

I fail to understand how it could be said. on the basis of the materials available before it. that the Sessions Court has exercised its discretion in any arbitrary manner. Further investigation and the committal Proceedings may probably present a different picture. It is not as though the Sessions Court is powerless or helpless to deal with the accused enlarged on bail if the circumstances warrant the cancellation of the bail that has been granted. Sub-section (2) of Section 498, Cri.P.C. provides sufficient safeguards against miscarriage of justice.

11. The argument that the Court was wrong in granting interim bail on 5.10.1972 also does not agorae to be tenable. The provisions of Section 497(2), in my opinion, empowers the Court to grant interim bail pending further enquiry into the matter where the Court finds that there are no reasonable grounds for believing that the accused had committed a non-boilable offence, but there are sufficient grounds for further enquire into his guilt.

12. About a period of two months has elapsed since the accused was granted bail However, the State has no case that the accused had indulged in tampering with the investigation, though of course, in paragraph 3 of the affidavit in support of petition, there is a rather bald statement that-

The respondent is a very influential person in Trichur and successful investigation will be thwarted by his being at large. Difficulties are being experienced in this connection ever since hp was released on bail.

In this context it will be worthwhile to note that by 4.10.1972 as many as 18 witnesses were Questioned by the police and during that period the accused was at large. Moreover, I am told, the statement of some of the important witnesses have been recorded under Section 164, Cri.P.C. From the counter-affidavit filed by the accused I find that between 25.9.1972 and 5.10.1972 the accused who is an advocate practicing at Trichur had been appearing in a large number of cases in various courts. It is surprising that the police did not succeed in apprehending him, though, according to them they bad known even on 2-10-1972 that he was involved in the case. The Sessions Court. I find, while granting the bail, has imposed certain conditions restricting the right of movement of the accused.

Taking all these facts and circumstances of the case. I find no ground for interfering with the discretion that has been exercised by the Sessions Court. I make it clear that the State is at liberty to move the Sessions Court at any time under Section 498(2) of the Code, if the prosecution is in a Position to place sufficient material which would require in the public interest, to cancel the bail bond. With the above observation the petition is dismissed.