

Muneer vs State Of Kerala on 20 June, 2024

Author: C.S.Dias

Bench: C.S.Dias

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 20TH DAY OF JUNE 2024 / 30TH JYAISHTA, 1946

BAIL APPL. NO. 4261 OF 2024

SC NO.1042 OF 2023 OF SESSIONS COURT, KASARAGOD

IN CRIME NO.550/2023 OF BADIADUKKA POLICE STATION, KASARGOD

PETITIONER/ACCUSED:

MUNEER,
AGED 41 YEARS
S/O. MOHAMMED, PEELIPALLA, BELA VILLAGE, KASARAGOD, PIN -
671321

BY ADV KODOTH SREEDHARAN

RESPONDENTS/COMPLAINANT:

1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN -
682031

2 THE STATION HOUSE OFFICER ,
BADIADKA POLICE STATION, KASARAGOD, PIN - 671512

BY ADVS.
PUBLIC PROSECUTOR
ADDL.DIRECTOR GENERAL OF PROSECUTION
ADDL. STATE PUBLIC PROSECUTOR

OTHER PRESENT:

SRI GRASHIOUS KURIAKOSE ,
SR PP- SEETHA S

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20.06.2024, THE

COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
BAIL APPL. NO. 4261 OF 2024

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ORDER

This is the second application filed under Section 439 of the Code of Criminal Procedure by the 1st accused in Crime No.550 of 2023 of the Badiadukka Police Station, Kasaragod, which is registered against the accused for allegedly committing the offences punishable under Sections 341, 324, 302, 397, 392, 201, 120B r/w Section 34 of the Indian Penal Code. The petitioner was arrested on 06.07.2023.

2. The prosecution case, in brief, is that: the accused, in furtherance of the common intention, hatched a criminal conspiracy to murder a person named Thomas Crasta (deceased), a bore well contractor, and then committed robbery. Accordingly, the accused murdered the deceased on 28.06.2023 and threw his dead body into the septic tank of a person named Sudheerkumar. Then, the accused committed robbery of the gold ornaments and mobile phone of the deceased and sold them at the Choice Gold Jewellery and Priyanka Jewellery of Puthige Gramapanchayath and received the money. Thus, the accused have committed the above offences.

3. Heard; Sri.Kodoth Sreedharan, the learned counsel for the petitioner and Smt.C.K.Suresh, learned Special Public Prosecutor. BAIL APPL. NO. 4261 OF 2024

4. The learned counsel for the petitioner submitted that there is a change of circumstance in filing the present application, in view of the filing of the final report before the jurisdictional court. This Court had not considered several contentions that were urged in the earlier application. The petitioner has been in judicial custody since 06.07.2023, the investigation in the case is complete and the final report has been laid. Therefore, the petitioner may be enlarged on bail.

5. The learned Public Prosecutor seriously opposed the application. He submitted that the petitioner has committed a very brutal crime of murdering the deceased and then trying to destroy the evidence. Moreover, the accused also committed robbery of the belongings of the deceased. There is no change of circumstances as alleged by the learned counsel for the petitioner. In fact, the final report was laid on 30.09.2023 i.e prior to the passing of Annexure-1 order. Merely because the petitioner has been in judicial custody since 06.07.2023, the same is not a ground to enlarge him on bail, in view of the law laid down by the Hon'ble Supreme Court in Kalayan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another [AIR 2004 SC 1866]. If the petitioner is released on bail, there is every likelihood of him BAIL APPL. NO. 4261 OF 2024 tampering with the evidence and intimidating the witnesses. Hence, the application is only to be dismissed.

6. The prosecution allegation against the petitioner is that, he along with other accused had hatched a conspiracy, in furtherance of their common intention and they had committed the murder of the deceased and, thereafter, they robbed the belongings of the deceased.

7. The contention of the learned counsel for the petitioner is that there is a change of circumstance in view of the filing of the final report. Moreover, this Court has not considered many of the contentions in the earlier order passed.

8. I am unable to agree with the above contentions for more reasons than one. Firstly, the final report was filed on 30.09.2023 and Annexure-1 order, dismissing the petitioner's application for bail was passed on 04.01.2024, i.e after the filing of the final report. The non-consideration of the contentions that were raised by the petitioner in the earlier bail application is not a ground to file a subsequent application. If the petitioner was aggrieved, he ought to have challenged the said order. It is well settled in *Kalayan Chandra Sarkar (supra)*, that merely because the accused has undergone a period of detention after having BAIL APPL. NO. 4261 OF 2024 committed a serious offence, the same is not a ground to enlarge the accused on bail.

9. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* [(2010) 14 SCC 496], the Honourable Supreme Court has laid down the broad parameters for Courts while dealing with bail applications by holding as follows:

"9.xxx xxx xxx 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".

10. Similarly, in *Kalyan Chandra Sarkar v. Rajesh Ranjan*, [(2004) 7 SCC 528], the Honourable Supreme Court observed thus:

"11.The law regarding grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of BAIL APPL. NO. 4261 OF 2024 course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598] and *uran v. Rambilas* [(2001) 6 SCC

338.)

11. Likewise, in *Gurucharan Singh Ors. V. State (Delhi Administration)* [(1978) 1 SCC 118], the Honourable Supreme Court has held that while considering an application of bail, it is necessary to consider the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State, BAIL APPL. NO. 4261 OF 2024 and similar factors which may be relevant in the facts and circumstances of the case.

12. It is also worth recollecting the observations made by the Hon'ble Supreme Court in *Ash Mohammad v. Shiv Raj Singh @ Lalla Babu & Anr* [(2012) 9 SCC 446] in the following lines:

"30. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restriction on liberty of the accused.

13. After bestowing my anxious consideration to the facts, the materials placed on record, the rival submissions made across the Bar and on comprehending the nature, gravity and seriousness of BAIL APPL. NO. 4261 OF 2024 the accusations levelled against the petitioner, that there are prima facie materials to substantiate the petitioner's involvement in the crime, there is no change of circumstance subsequent

to the passing of Annexure-1 order, since the final report was filed before the passing of Annexure-1 order and the reasonable apprehension projected by the prosecution that there is every likelihood of the petitioner intimidating the witnesses and tampering with the evidence, I am not satisfied that the petitioner is entitled to be released on bail, especially because it would have deleterious impact on the society.

Resultantly, the bail application is dismissed.

Sd/-

C.S.DIAS JUDGE rp BAIL APPL. NO. 4261 OF 2024 APPENDIX OF BAIL APPL. 4261/2024 PETITIONER ANNEXURES Annexure 1 TRUE COPY OF THE ORDER IN B.A.NO.11028/2023 DATED 04/01/2024 OF THIS HON'BLE COURT