

(2021) 03 KL CK 0012

High Court Of Kerala

Case No: Bail Application No. 6510 Of 2020

Jollyamma Joseph @Jolly

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: March 1, 2021

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 174, 439
- Indian Penal Code, 1860 - Section 34, 110, 120(B), 302, 465, 471, 474
- Poisons Act, 1919 - Section 2, 6(2)

Hon'ble Judges: Ashok Menon, J

Bench: Single Bench

Advocate: Biju Antony Aloor, Jobin Abraham, T.S. Krishnendu, K.P. Prasanth, Archana Suresh, Shafin Ahammed, Arunraj S, Hijas T.T, Surya Raj N.S, Vishnu Dileep, Vijayan M.K, Suman Chakravarthy

Final Decision: Dismissed

Judgement

1. Application for regular bail under Section 439 of the Cr.P.C.

2. The applicant is the 1st accused in Crime No. 333/2019 Of Kodenchery Police Station for having allegedly committed offences punishable under

Sections 110, 120B, 465, 471, 474 and 302 read with Section 34 of the I.P.C. and under Section 2 read with Section 6(2) of Poisons Act 1919.

3. The prosecution case, in brief, is that keeping an eye on the property belonging to her father-in-law Tom Thomas she allegedly hatched a

conspiracy with A2 and A3 to cause his death by administering cyanide that she had obtained it from A3, through A2 and administered it to him at

about 18:30 hours, on 22.08.2008 by filling his daily dose of vitamin capsule with cyanide resulting in his death.

4. The applicant is allegedly involved in the murders of her mother-in-law Annamma, husband Roy Thomas, her late husband's maternal uncle

Mathew, Alfine and Sili, the infant child and wife of her present husband. Thus, she is allegedly involved in the murders of six persons.

5. The reason for the serial killings, according to the prosecution, was thus:

The first applicant was married to Roy Thomas, the elder son of the deceased and was resided with her late husband Roy Thomas and his parents for

about 14 years in her matrimonial home. All these years, she had made them believe that she was employed as a Professor in NIT, Kozhikode. Her

mother-in-law late Annamma Thomas, a retired teacher, was a shrewd lady. Fearing that she may discover the truth about the first accused's

unemployment, found her to be a stumbling block in her taking control of the affairs of the matrimonial home, she was the first to be administered 'dog

poison' in her soup during dinner on 22/02/2002. She consumed the soup laced with poison and passed away. No one had any reason to suspect her

death and her body was interred as a natural death.

6. After Annamma's death, her second victim was Tom Thomas, her father-in-law, the deceased in the instant case. He was opposed to her amoral

relationship with A2. That apart, he had sold part of his property for Rs.18 lakhs, which she had taken possession of from him under some pretext.

The deceased had 383/4 cents of land with the residential house belonging to him. The applicant sensed that the deceased was intending to give that

property to his younger son Rojo Thomas, who was in the USA. Shortly before his death, the deceased had gone to Colombo to meet his daughter.

His son Rojo intended to take him to the USA from there. Fearing that, her avarice of grabbing the property would not be possible, she contacted him

over the phone and informed him about her pregnancy, and also complained about her husband Roy getting addicted to alcohol. Hearing this, he

immediately rushed back home. The applicant somehow managed to get possession of his title deeds and concocted a forged Will bequeathing his

properties to her husband Roy. Having got all his property bequeathed in the name of her late husband Roy Thomas, by concocting a Will she wanted

the bequest to come into force, and hence liquidated him by administering cyanide on 22/08/2008, as stated above. She included A2 and A3 in her

conspiracy by making A2 believe that Tom Thomas, who was opposed to her intimacy with him, could create problems if he continued to live. A2, got

the cyanide from A3, luring him too with an amoral relationship with her. A3 was working in a jewellery, and cyanide was easily accessible to him.

Again, nothing was suspected by anyone. It simply passed off as a natural death, and he was buried in the country churchyard.

7. Then she devised a plan to get rid of her own husband Roy Thomas, who was the owner of the property. That is how the properties bequeathed to

him would have devolved upon her. On 30/09/2011, he was found lying unconscious on the floor of his toilet. The untimely death of Roy was the

turning point. His siblings were not ready to accept the story of his untimely unnatural death. With the help and assistance of their uncle Mathew, they

got the body of Roy subjected to autopsy. That is the first time death by cyanide poisoning was unravelled. A1 was still successful in contriving a story

of a depressed alcoholic man ending his life in desperation. The investigation of the FIR registered as Crime No.189/2011 at Kodenchery Police Station

under Section 174 of the Cr.P.C; was closed as a case of suicide.

8. Still not satisfied, Machadiyil Mathew was nosy and attempted to reopen the investigation pertaining to the suspicious death of his nephew, he

needed to be silenced. The death of his nephew and his parents made him inquisitive enough to be instrumental for an investigation by the Police.

Fearing that he would be a stumbling block in her pursuit for happiness and financial security, he too was administered cyanide by mixing it in his

evening round of drinks.

9. By that time, the first accused had developed an intimacy with her present husband Shaju. But he was a married man with a kid and she could not

have had him as her husband without first removing those obstacles. Hence, very cunningly she got intimate with his wife late Sili. Thereafter, their

child Alphine, too was eliminated in a similar manner on 03/05/2014. Under the guise of helping Sili, a distraught mother, she went along with her for

an appointment with a dentist and laced her medicines with cyanide, resulting in her death on 11/01/2016. Playing the role of a sympathiser, she got

intimate with Shaju who had lost daughter and wife. They got married.

10. Rojo Thomas, the brother of deceased Roy was not convinced about the version that his brother would commit suicide. He triggered a further

investigation into all the deaths that had occurred by filing a petition before the District Police Chief on 20/06/2019. Persistent follow-up by the siblings

of Roy Thomas induced the Police to shed their indolence and to reopen and proceed with the investigation in Crime No.189/2011 of Kodenchery

Police Station seriously. All the dead bodies were exhumed and subjected to autopsy. Her involvement in all other crimes came to the fore and she

was arrested on 05/10/2019 and her confession statement was recorded which indicated her complicity in all the above-mentioned crimes. FIR

Nos.332, 333, 334 and 335 of 2019 were registered at Kodenchery Police Station for the murders of Annamma, Tom Thomas, Manjadiyil Mathew and

Alfine and Crime No.980/2019 was registered at Thamarassery Police Station for the death of Sili Shaju.

11. A1 was arrested in this case on 05.10.2019, and her formal arrest in this case was recorded on 12.11.2019. On the role of A2 and A3 being

exposed, they too were arrested on 22.11.2019 and 01.12.2019 respectively. A3 was granted bail by the Sessions Court on 11.06.2020. The applicant

and A2 continue in judicial custody. The final report has been laid within the statutory period, on 06.02.2020.

12. The applicant contends that there is no evidence against her so as to even proceed with the trial. It is stated that the chemical examination report

does not indicate anything to suggest the involvement of the applicant. No remnants of cyanide have been recovered from the body subjected to

autopsy. The confession statements recorded by the prosecution in the connected cases are not admissible in this case. The recovery of cyanide on

the basis of an alleged confession is totally inadmissible. The applicant has been released on bail in Crime No.332/2019 as per Order in

B.A.No.5389/2020. In all other crimes, her bail applications were dismissed.

13. The applicant has been in custody since her arrest. The trial is likely to get protracted considering the pandemic restrictions. Hence, the learned

Counsel appearing for the applicant, Shri B.A.Aloor, strenuously argues that the applicant be released on bail.

14. The prosecution case is that the applicant had obtained cyanide from A2, who got it from A3, and A1 had administered the poison to eliminate the deceased as also her other victims. She wanted to eliminate each of her victims for the reasons stated above, in pursuit of happiness in her life with her present husband Shaju. He was a school teacher, well settled and financially sound. She found Shaju to be an ideal partner, and for him, she not only killed his unsuspecting wife, but she also did not have any qualms about ending the life of their infant daughter. The motive attributed to A1 in murdering Mathew was because he was prying into her privacy and was relentless in unearthing the suspicious death of his nephew. A1 was a good communicator and even succeeded in winning the confidence of Mathew to serve him liquor. And then, she made use of the opportunity to lace the drink with cyanide supplied to her by A2.

15. The alleged murder of Tom Thomas was for two reasons. First, that he was not enthused about her intimacy with A2. Secondly, that the applicant was avaricious. She was not satisfied with the wealth she had. She was afraid that the deceased had intentions to give the house and the adjoining property to her brother-in-law Rojo. And she did everything that she could, to stop him from doing so. She suspected that the deceased who went to Colombo to meet his daughter, wanted to be taken to the USA by his younger son Rojo. She wanted to prevent that. Hence she contrived a story of her being pregnant, and also informed the deceased about her husband Roy being alcoholic problems. The deceased dropped the idea of going to the USA, and returned. Thereafter, the deceased carried out her plan to concoct his Will and then, end his life. She succeeded in doing that. There are statements of her son and other close relatives, pointing towards her complicity.

16. V.R. Krishna Iyer, J. has in *Niranjan Singh & another v. Prabhakar Rajaram Kharote & others*, [1980 KHC 664 : (1980) 2 SCC 559], held that detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications. To be satisfied with a prima facie case is needed, but it is not the same as an exhaustive exploration of the merits in the order itself. Discussion at prolix length, the probabilities of the prosecution's exculpatory case or its weaknesses is unwarranted. I find that prima facie materials are in abundance to

proceed with the trial against the applicant herein.

17. In *Prahlad Singh Bhati v. NCT Delhi*, (2001) 4 SCC 280, the Hon'ble Supreme Court opined thus:-

“(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.”

18. In *Chaman Lal v. State of U.P.*, (2004) 7 SCC 525, the Apex Court has laid down certain factors, namely, the nature of the accusation, the

severity of punishment in case of conviction and the character of supporting evidence, reasonable apprehension of tampering with the witness or

apprehension of threat to the complainant, and prima facie satisfaction of the Court in support of the charge to be kept in mind while considering an

application for bail. Again, in *Prasanta Kumar Sarkar vs. Ashis Chatterjee and another*, (2010) 14 SCC 496, it has been opined that while exercising

the power for grant of bail, the court has to keep in mind certain circumstances and factors. It would be useful to reproduce the said passage:

9....among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to be believed 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.

19. Applying the above principles to the case in hand, I find that the applicant who is indicted in six cases of alleged murders of her close relatives,

which includes her former husband, the father of her two children. The learned Senior Public Prosecutor Shri Suman Chakravathy points out that A1

had attempted to commit suicide inside the jail by slashing her wrists. Timely intervention saved her life. In case she is released on bail, there is every

possibility of her influencing or intimidating witnesses, repeating similar offences also cannot be ruled out, and may even go to the extent of causing

harm to herself.

20. In *Kalyan Chandra Sarkar v. Pappu Yadav* (2005) 2 SCC 42: 2005 KHC 604, the Hon^{ble} Supreme Court held thus:

“18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a

constitutional guarantee. However, Art.21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established

by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the

pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Art.21 since the same

is authorised by law.”

21. In this context, it would be profitable to reproduce a passage from *Neeru Yadav vs. State of Uttar Pradesh*, (2014) 16 SCC 508, wherein the

Court setting aside an order granting bail by the High Court, observed thus:

The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the 2nd respondent.

We are not oblivious of the fact that liberty is a priceless treasure for a human being. It is founded on the bedrock of constitutional right and

accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose

his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes a sense of emptiness.

The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed

and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to

rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective

wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective

and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society

expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm.

No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a

disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the

Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established

parameters of law.

22. In *Siddharam Satlingappa Mhetre v. State of Maharashtra and Others*, 2010 KHC 4952 : AIR 2011 SC 312, the Apex court has observed that the

courts considering the bail application should try to maintain fine balance between the societal interest vis-à-vis personal liberty while adhering to the

fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court. In the

decision *Virupakshappa Gouda and Another v. State of Karnataka and Another*. 2017 KHC 6239 : AIR 2017 SC 1685 discussing most of the above

cited decisions, the Apex court has reiterated that, a bail application cannot be allowed solely or exclusively on the ground that the fundamental

principle of criminal jurisprudence is that the accused is presumed to be innocent till he is found guilty by the competent court.

23. The detention of the applicant is in consequence to her involvement in six cases of alleged premeditated murders. Murder for personal gain has to

be viewed differently. Custodial trial is absolutely necessary. Her liberty at this juncture when the prosecution has been vigilant enough to complete

the investigation on time to deny her an opportunity to seek statutory bail, could only be at the risk of exposing the witnesses to a possible threat at the

hands of the applicant and thus prejudicing the prosecution case. The applicant is not entitled to any indulgence from this court.

The bail application is therefore dismissed. I am confident that the trial court will endeavour to dispose of all the cases against the applicant as

expeditiously as possible.