

## Najeeb Vs State Of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** April 22, 2021

**Acts Referred:** Code Of Criminal Procedure, 1973 " Section 439

Indian Penal Code, 1860 " Section 109, 120(B), 143, 147, 148, 149, 201, 212, 223, 224, 294(b), 341

Arms Act, 1959 " Section 27

**Hon'ble Judges:** Ashok Menon, J

**Bench:** Single Bench

**Advocate:** Sasthamangalam S. Ajithkumar, C.K.Sureshkumar

**Final Decision:** Allowed

### Judgement

1. Third successive application for regular bail under Section 439 Cr.P.C.

2. The applicant is the 8th accused in Crime No.2414/2020 of Venjaramood Police Station, Thiruvananthapuram, for having allegedly committed

offences punishable under Sections 120B, 143, 147, 148, 341, 294(b), 223, 224, 302, 109, 201 and 212 r/w Section 149 of the IPC, and also under

Section 27 of the Arms Act.

3. The prosecution case, in brief, is that because of political enmity towards the deceased persons, namely Mithilaj and Haq Muhammed, who belong

to the DYFI, on 30.08.2020, accused Nos.1 to 7 allegedly entered into a conspiracy to eliminate them as they were gaining popularity and political

ground in that locality. Therefore, out of political rivalry, the accused who belong to a rival political group, hatched a conspiracy and as determined,

accused 1 to 3 reached Thembamoodu Junction at Pullampara village at about 11 p.m on two motorcycles, one of which was owned by accused No.2

and the other belonged to the applicant herein. They lay in wait for the deceased to arrive. A short while thereafter, the informant accompanied by the

two deceased reached there on a motorcycle. A1 to A3 accosted them. They were wrongfully restrained, hurled with abuses, and a scuffle ensued, as

a result of which, A2 allegedly chopped Haq Muhammed on his head with a chopper and the 1st accused stabbed Mithilaj with a knife. Both of them

sustained fatal injuries, fell down on the road. When Haq Muhammed attempted to escape from the scene, accused 1 to 3 chased him and caused

fatal injuries again with a chopper, knife and sword. The people in the locality were drawn to the scene and they moved the injured Mithilaj and Haq

Muhammed to the hospital, where they succumbed to their injuries. While fleeing from the scene after the assault, the first accused left behind the

motorcycle belonging to the applicant bearing Reg. No.KL 21/K-4201. Thereafter, he hatched a conspiracy with the applicant and as per the

instructions given by the 1st accused, the applicant went to the scene of occurrence and stealthily removed the keys to the motorcycle, thereby caused

the disappearance of the evidence. It is indicated that the applicant had aided accused 1 to 3 to commit the offence and also to escape from the scene.

Accused No.9 had allegedly harboured accused 1 and 2 and also arranged money and vehicle to facilitate them for escaping to a safe place.

4. The applicant was arrested on 01.09.2020 and remanded to judicial custody. He continues to remain in custody. The bail application filed by him

before the Sessions court was dismissed and therefore he has approached this Court for indulgence, stating that he does not have any criminal

antecedents, his role is very limited, and that he actually belongs to the same political party to which the deceased belong and the allegation that he had

joined hands with the other accused out of political rivalry towards the deceased is an absolute untruth and therefore, he may be released on bail since

he has been incarcerated for a fairly long time. The earlier applications, BA No.6457/2020 and BA No. 7106/2020, were rejected by this Court,

finding that there is an existing rivalry between the two political factions and it is too early for the applicant to be released on bail. There is not only a

threat to the witnesses but also to the applicant himself, since the other rival political groups are in the lookout to retaliate. Police parties have been

engaged to see that the situation is under control. In case the applicant is released on bail at this point in time, there is a possibility of a flare-up of the

rivalries. There was also an impending local body election, which prompted the prosecution to oppose the application with vehemence.

5. Heard the learned counsel for the applicant, Sri. Sasthamangalam S. Ajithkumar, and the learned Senior Public Prosecutor Sri. C.K.Suresh. Case

diary, Final Report and the records perused.

6. The learned Public Prosecutor submits that there is a very tense situation prevailing in the locality because of the political rivalry between the two

groups. There is every possibility that the members of the group to which the deceased belonged, may retaliate and the law and order situation in that

region may worsen. It is indicated that subsequent investigation revealed that the applicant had abetted the other accused in committing the offence

and Section 109 of the IPC has also been incorporated for that purpose. He also actively got involved in the destruction of evidence. There is every

possibility that if the applicant is released on bail, he may attempt to intimidate or influence the witnesses. There is also the possibility that he may flee

from justice.

7. The learned Public Prosecutor also points out that in case the applicant is released on bail, there is every possibility of a threat to his life also. There

is also the possibility that he may again regroup with the other members of his political party to defend themselves or to retaliate against the rival

faction. To prevent all these eventualities, it is only befitting that the applicant may not be released on bail, submits the learned Prosecutor.

8. The learned counsel for the applicant submits that the final report has already been filed after completion of the investigation. Hence, further

detention of the applicant is unwarranted. It is also submitted that the applicant was not present at the scene of occurrence and the only allegation

against him is that he was part of the conspiracy and had abetted A1 to A3 to accomplish the decision taken during the conspiracy. Moreover, the

applicant had allegedly provided his motorcycle to A1 to facilitate reaching the scene of occurrence. When the applicant had also allegedly removed

the key from the motorcycle on the following day as a result of the conspiracy with the first accused to cause destruction of evidence. The learned

counsel submits that there is little material gathered by the prosecution to prove the conspiracies alleged. Moreover, the 9th accused who is similarly

placed and was alleged to be part of the conspiracy and had also facilitated the prime accused to flee and had harboured them, was released on bail.

The learned counsel would submit that the applicant has only a lesser role in comparison to A9. Hence, the learned counsel strenuously pleads for

granting of bail to the applicant.

9. After having considered the entire facts and circumstances in this case, I find that the earlier bail applications were dismissed for two reasons. First,

that the prosecution has produced sufficient materials to prima facie establish the complicity of the accused in the crime by being a co-conspirator,

indicted by statements of witnesses recorded by the investigating officer, the use of the applicant's motorcycle by A1 to reach the scene of

occurrence, indicating the involvement of the applicant in assisting the prime accused. And the fact that the applicant had stealthily removed the key of

his motorcycle left behind by A1, after the murder. Secondly, this court had taken serious note of the worsening law and order situation in the locality

following the incident. The impending local body election was considered as a possible trigger in the hostility that existed between the warring political

groups.

10. The Hon'ble Supreme Court has held that a prolix discussion regarding the entire evidence collected by the prosecution against the accused

need not be considered at the stage of granting of bail. I found substance in the arguments advanced by the learned Public Prosecutor on the two

points referred to above. I am still not going into the intricacies of the evidence that is collected by the prosecution as against the applicant. I would

continue to hold that it is for the trial court to decide those on merits and therefore, an opinion by this regarding the sufficiency or otherwise of those

materials at this stage may not be appropriated. This court had while dismissing the first application for bail held that it was too early for the applicant

to be released on bail, considering the law and order situation of the locality and the nascent stage of the investigation. The application was however

dismissed, holding it does not preclude the applicant from approaching the Sessions Court or this Court for a fresh bail on change of circumstances

after a lapse of time. When the second application for bail was filed, the impending local body election was taken as a point of objection by the

prosecutor, and this court had held that the election may trigger the existing hostilities, and hence declined to grant bail.

11. The learned Prosecutor has relied upon the decision of the Supreme Court in Kalyan Chandra Sarkar v. Rajesh Ranjan [2004 KHC 754 : AIR

2004 SC 1866] to support his argument opposing the bail when successive applications are made. The Apex Court held thus:

“11. The law in regard to 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 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 of 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 and Others (2002 (3) SCC 598)

and Puran v. Rambilas and Another (2001 (6) SCC 338).

12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for

grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that

bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail

should be granted. (See Ram Govind Upadhyay, supra).

The Apex court has also observed thus while considering successive applications for bail :

“20. Before concluding, we must note though an accused has a right to make successive applications for grant of bail the court entertaining such

subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the

court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. In

the impugned order we do not see any such fresh ground recorded by the High Court while granting bail. It also failed to take into consideration that at

least on four occasions order refusing bail has been affirmed by this Court and subsequently when the High Court did grant bail, this Court by its order

dated 26th July, 2000 cancelled the said bail by a reasoned order. From the impugned order, we do not notice any indication of the fact that the High

Court took note of the grounds which persuaded this Court to cancel the bail. Such approach of the High Court, in our opinion, is violative of the

principle of binding nature of judgments of superior court rendered in a lis between the same parties, and in effect tends to ignore and thereby render

ineffective the principles enunciated therein which have a binding character.

The learned Prosecutor draws attention of this court to the decision of the Apex court in State of Maharashtra v. Captain Buddikota Subha Rao [1989

KHC 814 : AIR 1989 SC 2292] wherein it was held thus:

“Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there

being a change in the fact situation. And when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and

not merely cosmetic changes which are of little or no consequence. 'Between the two orders there was a gap of only two days and it is nobody's case

that during these two days drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline propriety and comity

demand that the 1 impugned order should not have been passed reversing all earlier orders including the one rendered by Puranik, J. only a couple

of days before, in the absence of any substantial change in the fact situation.

The learned Prosecutor also relies on the Full Bench decision of this Court in *Firos Ali v. State of Kerala* [2016 (5) KHC 69] to argue that subsequent

application for bail by the same accused in the same crime will be entertained only if there is a change in circumstances for filing such application. He

submits that filing of the final report is not a change in circumstance which would enable the applicant to seek bail.

He relies on the decision of the Supreme Court in Virupaksha Gouda and Another v. State of Karnataka and Another [2017 KHC 6239 : AIR 2017

SC 1685] to submit that filing of charge sheet does not amount to change of circumstances nor in any manner lesser allegations made by the

prosecution. I do agree with the learned Prosecutor that the fact that the accused has undergone a long period of incarceration by itself would not

entitle him to be enlarged on bail. (See Rajesh Ranjan Yadav @

Pappu Yadav v. CBI through its Director [2007 KHC 3002 : AIR 2007 SC 451] and Dinesh M.N. (S.P) v. State of Gujarat [2008 KHC 4583 : AIR

2008 SC 2318].

12. In Prahalad Singh Bhati v. NCT, Delhi and Another [2001 (4) SCC 280], the Supreme Court has laid some guidelines for granting bail as thus:

“8. The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not

in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the

severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar

to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered

with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail

the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail

can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in

support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

13. 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 is 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.

14. Coming back to the facts of this case, I have already stated the reasons why the bail applications of the applicant was rejected on the previous two

occasions. The first time, the investigation was at a nascent stage. The second time, it was the elections which was considered as a reason which

could flare up the hostilities between the two political groups. The applicant has no criminal antecedent. He was not directly involved in the murder.

What is attributed is that he was the prime conspirator and abettor of the crime. His role in the conspiracy is sought to be proved by statements of

witnesses who saw him handing over his motorcycle to A1 and speaking to him about teaching a lesson to the deceased. There are also statements of

witnesses indicating that he had removed the key from his motorcycle parked at the scene of occurrence. I agree that conspiracy can only be proved

by circumstantial evidence. No direct evidence of conspiracy would be available, as it is something done in secrecy.

15. A1 to A3 are the main perpetrators of the murder. The role of the applicant in this crime is that of a conspirator and abettor. Considering the fact

that he has no antecedents of similar nature, and there is no possibility of his fleeing from justice, custodial trial of the applicant does not seem

imperative. Hence the application is allowed and the applicant is directed to be released on bail on execution of a bond for â,150,000/- (Rupees fifty

thousand only) with two solvent sureties for like amount each to the satisfaction of the jurisdictional Court, and on following further conditions:

1. The applicant be present before the trial Court on all dates of postings without fail, unless specifically exempted by the Court.

2. The applicant shall not get involved in any offences of similar nature during the currency of the bail.

3. The applicant shall not influence or intimidate witnesses or tamper with evidence.

4. The applicant shall not leave the State of Kerala without prior sanction of the Court.

5. The applicant shall surrender his passport before the jurisdictional Court or file an affidavit if he does not have one. The passport shall be released

to the applicant only in case the trial Court finds it necessary to permit him to travel abroad.

Breach of any of the conditions stated above shall entail in cancellation of bail on request being made by the Prosecutor before the jurisdictional Court.