

Reshma S. Nair Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: March 1, 2023

Acts Referred: Code of Criminal Procedure, 1973 " Section 41A, 174, 439
Indian Penal Code, 1860 " Section 84. 302

Hon'ble Judges: Ziyad Rahman A.A, J

Bench: Single Bench

Advocate: S.Rajeev, V.Vinay, M.S.Aneer, Sarath K.P., Prerith Philip Joseph, Anilkumar C.R., P.Narayanan

Final Decision: Dismissed

Judgement

Ziyad Rahman A.A, J

1. This is an application filed under Section 439 of the Code of Criminal Procedure seeking regular bail.

2. The petitioner is the accused in Crime No 645/2022 of Kanjar Police Station. The offence alleged against the petitioner is under section 302 of the

Indian Penal Code.

3. The prosecution case is as follows: The petitioner is a lady aged 25 years, whose marriage with one Arjun was solemnized on 21.11.2021. She gave

birth to a boy child on

30.10.2022. It is alleged that on 17.10.2022 at 3.30 P.M., the petitioner committed the murder of the child when the child was just 18 days old. Initially,

the crime was registered by the police under section 174 of the Cr.P.C. On that day, the child was found bleeding from the nose and was taken to the

hospital. Later, the child died. During the investigation, it was revealed that, after giving birth, the petitioner suffered from lactation insufficiency. She

had to feed the child by squeezing her breast manually, resulting in breast pain. As the child was not getting adequate milk, the child used to cry

throughout the day due to hunger, and on account of this, the petitioner developed a hatred towards the child. On 17.02.2023 at 15.20 hrs, the child

woke up from sleep and started crying. Even though the petitioner tried to feed the child, the child could not gulp breast milk. This infuriated the

petitioner, and due to anger, she lifted the child by holding his legs and hit the head of the child on the marble floor, thereby causing injuries. Later,

when the child started bleeding from the nose, she handed over the child to her mother informing her that the child accidentally slipped from her hands.

As the child died and the crime was registered. The petitioner was arrested as part of the investigation of the case on 20.01.2023, when she appeared

before the investigation officer based on a notice issued to her under section 41A of Cr.P.C. Since then, she has been under judicial detention. Even

though she moved an application for bail before the Sessions Court, Thodupuzha, the same was dismissed as per Annexure III order. The petitioner

submitted this application in such circumstances.

4. Heard Sri. S. Rajeev, learned counsel for the petitioner and Sri.P.Narayanan, Additional Public Prosecutor for the State.

5. The learned counsel for the petitioner contends that the petitioner was under a mental depression after the child's birth, which was identified as a

mental state known as "Post Partum Depressions (PPD)". The fact that the petitioner could not give sufficient breast milk to the child due to

lactation deficiency escalated her mental stress. The Post Partum Depression became severe after the death of the child, and she is being subjected to

treatment at Sunrise Hospital, Ernakulam and is now under medication. According to the learned counsel for the petitioner, she needs to continue the

treatment for at least two years to get rid of the depression. The petitioner also relies on Annexure II medical records to substantiate the mental

condition of the petitioner and the treatment that she was availing. Thus, it is submitted that the act allegedly committed by the petitioner was not with

a conscious mind, but it was committed due to such mental depression. It was further pointed out that the condition of the petitioner would get

worsened if the petitioner is kept under detention since she requires constant personal attention and medication.

6. On the other hand, the learned Public Prosecutor would oppose the application. It is pointed out that there are materials indicating the commission of

the offence by the petitioner. Now the investigation is in progress, and hence the petitioner's release is likely to hamper the same.

7. I have gone through the records and heard the contentions from both sides. The Annexure II document would reveal the mental condition of the

petitioner and the treatment availed by her. It is contended by the learned counsel for the petitioner that "Post partum Depression (PPD)", also

known as Post Natal Depression, is a type of mood disorder associated with child birth. It is further pointed out that PPD can interfere with normal

maternal-infant bonding and adversely affect acute and long term child development. Postpartum Depression may lead mothers to be inconsistent with

child care. In rare cases i.e. about 1 to 2 per 1,000, the PPD appears as Post Partum Psychosis, which is the severe form of PPD. Based on certain

articles, it is pointed out that, in certain cases, even infanticide may occur. It is further pointed out that, as per Modi's text book of Medical

Jurisprudence and Toxicology (25th Edition) on page 897, Postpartum Psychosis Depression (Puerperal Depression) is explained in the

manner as follows:

"Postpartum psychosis depression alone or with schizophrenic or mixed syndromes occurs within eight weeks of delivery. Puerperal Depression is almost

invariably preceded by a lucid interval of three to four days after delivery. The onset is acute and often accompanied by clouding of consciousness and there may be

delusion or hallucination of the depressive nature. A woman may kill her infant while in state of puerperal depression and subsequently develop amnesia for the

complete episode of the child's death.

8. As per Annexure II, Dr Chalam Das.V, a Consultant Psychiatrist, certified that the petitioner was diagnosed with Post Partum Depression suffered

from child birth. It was described as a depression arising from the combination of hormonal changes, psychological adjustment to motherhood and

fatigue. The said document would indicate the medication used for schizophrenic and mania.

9. Thus, on perusing the materials placed on record, including the mental condition of the petitioner as revealed through Annexure II, it appears that

there is some force in the contention of the learned counsel for the petitioner. Though the matter is now under investigation, and the contention of the

learned counsel for the petitioner regarding her mental status is to be subjected to such investigation, at the moment, I have no reason to discard the

findings in Annexure II medical records. The allegation is that the petitioner had committed the murder of the child, just 18 days old, by hitting his head

on the floor, after holding the child by his legs. No mother with a proper mental status, could be expected to commit such a heinous act under normal

circumstances. It is also to be noted in this regard that, even in the statement of investigation officer, which is made available before this court for

perusal, it is mentioned that, the petitioner developed a hatred towards the child, since the child used to cry throughout the day due to hunger as the

petitioner was suffering from lactation insufficiency and was unable to feed the child properly. Thus, from the materials produced before this court, it

is evident that the chances of the petitioner suffering from mental depression as contended by the learned counsel for the petitioner, are very high. The

manner in which the murder was allegedly committed by the petitioner also pointing towards the said possibility, as committing a murder of her own

child, just aged 18 days, may not possible for a mother, with a normal mental status under normal circumstances. The conclusions of the investigation

officer as revealed from the statement also suggests the possibilities of such mental disorder. Therefore, the continued detention of the petitioner can

have adverse impact, and at the same time, it may not provide any fruitful purposes to the investigation as well. Section 84 of the Indian Penal Code

provides that nothing is an offence, which is done by a person who, at the time of doing it by reason of unsoundness of mind, is incapable of knowing

the nature of the act or that he is doing what is either wrong or contrary to law. Though this is a matter to be investigated, and no final conclusion can

be arrived before the completing the investigation, I am of the view that, for the purpose of bail, the materials placed on record appear to be adequate.

The possibility of the existence of such mental disorder cannot be ruled out. Therefore, unless the petitioner is released so as to avail medical

treatment with proper attention and personal care of the relatives, the situation is likely to be worsened, resulting in irreparable loss to the petitioner as

well as her near and dear. Now the petitioner is under detention from 20.01.2023 onwards and more than a month has been elapsed. Further

incarceration of the petitioner appears to be not necessary. It is reported that the petitioner was under the care of her husband, until she was taken

into custody. Therefore, the petitioner can be released on bail subject appropriate conditions to ensure that her treatment is continued without any

interruption.

In the result, this application is allowed and the petitioner is directed to be released on bail, subject to the following conditions;

i) The petitioner shall be released on bail on executing a bond for Rs.1,00,000/-(Rupees One Lakh only) with two solvent sureties for the like sum each to the

satisfaction of the jurisdictional Court.

ii) The jurisdictional court shall ensure that, the petitioner is released to the custody of the husband of the petitioner or any other person who is competent to act as

the guardian of the petitioner, after accepting the affidavit of such person undertaking that, he/she shall ensure that the treatment of the petitioner shall be continued

uninterruptedly and he/she shall furnish the details of the medical treatment availed, to the investigation officer, once in two weeks from today onwards.

iii) The petitioner shall appear or be produced before the Investigating Officer between 10.00 a.m and 12.00 a.m every Saturday until the filing of the final report.

iv) The petitioner shall also appear before the Investigating Officer as and when required.

v) The petitioner shall not commit any offence of similar nature while on bail.

vi) The petitioner shall not leave the State of Kerala without the permission of the trial Court.

In case, the investigation officer is not satisfied as to the adequacy of proper medical attention of the petitioner, the matter shall be reported to the

jurisdictional court immediately, thereupon, the jurisdictional court shall pass appropriate orders for ensuring proper treatment to the petitioner. In case

of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation of bail, if any, filed

and pass appropriate orders in accordance with law.