
(2005) 06 KL CK 0089

High Court Of Kerala

Case No: B.A. No"s. 3581 and 3582 of 2005

Shaji

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: June 28, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 227, 439
- Penal Code, 1860 (IPC) - Section 120B, 301, 302, 34, 364

Citation: (2005) 4 KLT 995

Hon'ble Judges: R. Basant, J

Bench: Single Bench

Advocate: K. Ramakumar, for the Appellant; K. Ravikumar, Sr. Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Basant, J.

Applications for regular bail. The petitioners are accused 1 and 2. Altogether, there are 5 accused persons. They face indictment for the offences punishable under Sections 120B, 301, 302 and 364 read with Section 34 of the IPC.

2. The 1st accused is a senior official of the Police Department. The 2nd accused is a relative of his. The deceased was related to both the petitioners-accused.

3. The prosecution alleges that the petitioners had entered into a conspiracy to do away with the deceased. The 1st accused had engaged accused 3 to 5 who were also allegedly the co-conspirators. The 1st accused entertained bitter animosity against the deceased who was employed by him and who allegedly had an illicit relationship with the wife of the 1st accused.

4. In furtherance of the conspiracy, the 2nd accused allegedly misled the deceased and ensured that he was delivered to the custody of the 1st accused who along with accused 3 to 5 took him away in a Maruthi van, murdered him inside the Maruthi van, took the body to a deserted place in the property of the 1st accused, dismembered him using a heavy chopper which was got made with that end in view and disposed of the body in three pieces -- legs, trunk and head at different places. This is the gist of the allegations.

5. The crime was initially registered under the caption "Man missing" on the complaint of the father of the deceased. Later, when portions of the body were found, crimes were registered in respect of such incidents also. Investigation revealed that all these crimes are connected and one common investigation continued. Investigation is now complete. Final report has already been filed. Accused 3 to 5 have not been apprehended. They have been shown as absconding in the final report. The petitioners were both arrested on 24.2.2005. They continue in custody. Period of 90 days from the date of first remand has elapsed. In the meantime, charge sheet has also been filed. Notwithstanding that, the learned Sessions Judge has refused bail to the petitioners. They repeat their prayer for grant of bail before this Court.

6. The learned Counsel Sri. K. Ramakumar has advanced arguments on behalf of both the petitioners --accused. He contends, first of all, that the media has always unfairly conducted a trial against accused and has tarnished them black. This Court may steer clear of any such impressions which may be left behind by such unfair media trial. The learned Counsel secondly contends that right to freedom, personal liberty, life and reasonable opportunity of the accused to defend themselves against the criminal charge are all involved and in these circumstances a realistic, humane and reasonable view may be taken on the question of grant of bail. It is further contended that as against the 2nd accused, except the allegation of conspiracy, there is no involvement admittedly in the actual commission of the offence of murder. So far as the 1st accused is concerned also, the materials produced are not worthy of acceptance and in these circumstances, there is no strong prima facie case against the accused persons to justify or warrant their continued detention without bail.

7. It is further contended that no purpose would be achieved by detention of the petitioners. They are not likely to abscond or tamper with the evidence. At any rate, appropriate conditions can be imposed to ensure that such adverse consequences do not result. It is further submitted that the non-apprehension of accused 3, 4 and 5 cannot be a justifiable reason to insist on the continuance of the petitioners in custody. It is not even known whether the police will be able to apprehend such accused at any later point of time. In these circumstances, the learned Counsel prays that the petitioners may now be enlarged on bail.

8. These applications are stoutly opposed by the learned Public Prosecutor. The learned Public Prosecutor contends that sufficient probative materials have been collected pointing unerringly to the guilt of the accused. The learned Public Prosecutor contends

that the mere fact that 90 days have elapsed from the date of arrest or that charge sheet has been filed may not weigh with the Court while considering the question of grant of bail. The offence committed is gruesome and macabre. It is a pre-planned crime. The crime has been committed by the influential and affluent 1st accused who conspired with his close relative -- the 2nd accused as also accused 3 to 5 allegedly goondas and men from the under world with whom the 1st accused had occasion to interact in his capacity as a police official. There is real possibility of the accused intimidating the witnesses and tampering with the evidence. Their release on bail would hamper the ability of the police to trace and bring to book accused 3 to 5. The trial can be conducted immediately and in a case like the instant one the facts of which are very exceptional, there may be a direction for expeditious completion of trial. Accused may not be enlarged on bail, prays the learned Public Prosecutor.

9. The learned Counsel for the petitioners hastens to submit that though he has advanced arguments that no satisfactory materials have been collected against the petitioners, this Court may not embark on any detailed discussion on the acceptability of the allegations or the credibility of the data test it should prejudice the interests of the petitioners in the course of trial. It may be difficult for the trial Judge to erase impressions resulting from any such findings/observations on merits about the acceptability of the allegations or the credibility of the data collected. In these circumstances, care may be taken not to, even remotely, make any observations which may influence the trial Judge.

10. The learned Counsel for the petitioners, first of all, laments that the petitioners have been subjected to unfair media trial and remain condemned unheard even before the trial against them has commenced. The adverse media trial may not be permitted to have any impact on the judicial mind. Courts have to keep away from such unfair media hype, urges the learned Counsel, of course, in a most careful and sublime manner.

11. Not long earlier in history it would have been considered blasphemous to even think that such media trial can make any impact on the judicial mind. That such a plea has been advanced at this level of judicial functioning generates anguish in the judicial mind and it does perhaps point to an existing malady. These are days of fierce competitive journalism and in the search for attractive headlines, no holds appear to be barred. There is long queue of obliging jurists, lawmen, opinion makers, cultural leaders etc., (not to speak of busy bodies) of the genuine and pseudo varieties making a bee line for the head lines in the media. Pending investigation, pending trial and pending appeals, we have willing critics who oblige the media and discuss merits of the cases before the Courts - at times admittedly without even reading the subject matter of criticism.

12. Materials before Courts, and judicial errors which may be committed by the Courts in dealing with such materials, deserve to be discussed and corrected, at least, initially in the pleadings, memoranda of appeal or revision and across the Bar and not in public pulpits, streets or the media. The refined polity owes it to the judicial system and the system owes it to the functionaries that they are permitted to function without fear or

favour. Curse the day when a judicial functionary will have to render decisions with one eye on the headline in the media next morning. Loathe the day when such opinion makers can even indirectly influence the decision making process and the decision maker who must be bound only to the law and his own conscience. Judicial minds must be made of sterner stuff, capable of introspection all the time but having the fortitude to ignore or spurn attempts to indirectly influence the decision making by media campaigns. Statesmen and the sublime fourth estate must realise the dangers involved in such attempts. The fear which the learned Counsel expresses on behalf of his clients is to my mind agonising. It negates the rule of law. The lingering anxiety of the inditee that the media might influence the decision maker against him revolts against the fundamentals of the fair trial. Judges by their training and equipment and also commitment to the judicial values must, and certainly can, steer clear of any such influences. Popularism is certainly not the virtue of a sitting Judge. So let the petitioners be assured that no judicial functionary shall ever be swayed by such media campaign.

13. I agree with the learned Counsel for the petitioners that any expression of opinion on merits about the acceptability of the allegations or the credibility of the data has to be avoided lest such observations may indirectly weigh with the trial Court, notwithstanding the effort of this Court to reiterate that no such observations must influence the Court when it evaluates the evidence during trial. I shall steer clear of that consequence.

14. Arguments have been advanced with the help of the decisions reported in [Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh](#), ; [Shaheen Welfare Association Vs. Union of India and others](#), ; State of Maharashtra v. Sitaram Popat Vetel 2004 SCC 1971; Union of India v. Rajesh Ranjan 2004 SCC 1987 and [Jayendra Saraswathi Swamigal Vs. State of Tamil Nadu](#), , about the principles of law applicable.

15. Grant of bail is the discretion of the Court. Though the cynic may call it the hunch of the Bench, it cannot be disputed that the judicial discretion u/s 439 of the Cr.P.C. has to be exercised by the Court, conscious of all the relevant inputs and on a total evaluation of all the relevant inputs objectively. The Court has to strike a balance between the cherished rights of the individual, to freedom and liberty, to life and to reasonable opportunity to effectively defend himself against the indictment on the one hand and the societal interests on the other. I do not think it necessary to advert to the precedents in detail. Bail and not jail must certainly be the rule. But the rule is not one that does not admit exceptions. The nature and gravity of the offence alleged, the circumstances under which the offence is committed, the impact which the crime generates in the mind of ordinarily prudent members of the society, its impact on the law and order situation in the society, the possibility of the inditees fleeing from justice, their potential to interfere with the fair trial, the possibility of intimidating and influencing witnesses are all to be taken into account by a court before exercising the crucial and vital discretion u/s 439 of the Cr.P.C.

16. The prosecution in particular relies on the following circumstances:

- (a) Accused Nos. 1 and 2 are close relatives and the 2nd accused is a dependent on the 1st accused.
- (b) The 1st accused had convincing motive against the deceased and did want some how to do away with him to pre-empt the possibility of the deceased eloping with his wife in whose name all the properties acquired by the accused stood.
- (c) The 1st and 2nd accused had occasion to meet each other and were found together on occasions prior to the incident. They allegedly conspired to commit the crime.
- (d) The 1st accused had allegedly made the necessary preparations for commission of the crime. He had got a weapon - a heavy chopper, made to order. He also acquired possession of a green Maruthi van to facilitate the commission of the offence.
- (e) The deceased was taken by the 2nd accused on his motor cycle on the evening of 15.2.05. He was kept with him till late in the night by taking him for dinner/drinks and to the theatre for a cinema. All this was done by the 2nd accused to facilitate the handing over of the prey (the deceased) to the 1st accused, as planned.
- (f) after the show, as instructed by the 2nd accused, the 1st accused had reached the theatre in the Maruthi van along with accused 3 to 5.
- (g) After the film, the 2nd accused proceeded along with the deceased on his motor cycle after giving signal to the 1st accused. The 1st accused and accused 3 to 5 in their Maruti van followed the 2nd accused and the deceased.
- (h) The 1st accused and accused 3 to 5 who proceeded in the Maruthi van intercepted the motor cycle and accused 1 to 5 ensured that the deceased was forcibly taken to the Maruthi van.
- (i) Thereafter, the deceased was not seen or heard by any one.
- (j) The deceased before his death was compelled to write a letter to his father, obviously with the intention of misleading all concerned, that he was going away to Bombay in search of employment and no body need search for him. The letter was posted on that night itself allegedly by the 1st accused.
- (k) The body of the deceased in three parts was found thereafter at different places.
- (l) Interrogation of the 1st accused led the police:
 - (i) to trace the Maruthi van in question which had traces of human blood available in it.

(ii) To locate the place in the property of the 1st accused where the body was allegedly cut into three parts and from that place hair samples of the deceased and human blood were detected.

(iii) To recover the weapon (which was stained with human blood) made to order by the 1st accused which was disposed of after the incident by throwing the same into water by the 1st accused.

(iv) To recover the blood stained shoes (stained with human blood) of the 1st accused which he had allegedly concealed after the commission of the crimes.

(v) To trace the spot where the head of the deceased was initially concealed to ensure that identity of the deceased was not established. The head of the deceased was later allegedly removed by the 1st and 2nd accused to a different place and abandoned. From the place where the head was initially concealed hair sample of the deceased as also human blood was detected.

(vi) A plastic wire which allegedly was used to do away with the deceased inside the Maruthi van was found available at the place where the head was so concealed allegedly at the initial stage.

17. Of course, there is no contention that the 2nd accused had actually taken part in the incident proper inside the Maruthi van where the death of the deceased occurred. But the case of the prosecution is that the 2nd accused had ensured that the deceased was made available to the 1st accused so that the conspirators could do away with him. There is also a further allegations against the 2nd accused that he had helped the 1st accused to dispose of the head from its place of earlier concealment into water.

18. Having considered all the relevant inputs, I need only observe that I do not find merit in the contention that there is no sufficient materials against accused 1 and 2 to suggest their complicity. As rightly requested by the learned Counsel for the petitioners, I do not intend to embark on any further or more detailed discussions on the acceptability of the above circumstances or the credibility of the data to establish such circumstances. Suffice it to say that at this stage, the circumstances enumerated appear to be formidable in the attempt to ascertain the culpability of the petitioners.

19. Undoubtedly the alleged offence is one which is gruesome and macabre. The conspiracy is diabolic in conception and shockingly ruthless in execution. The offence committed by a senior officer of the police (1st accused) in the circumstances alleged has got to be taken serious note of. All murders are cruel and shocking. But that does not mean that all such offences must be dealt with identically. Some offences have exceptional features that leave behind shock and scars which are peculiar, in the minds of the perceivers. The instant one belongs to that category.

20. I do not want to delve deeply into the potentiality of the petitioners to intimidate and influence witnesses and tamper with the possible evidence. Suffice it to say that I take note of the very peculiar nature of evidence which is possible in a case like the instant one and which is relied on by the prosecution. I do further note that the submission of the learned Public Prosecutor that a senior police official who has risen from the ranks to occupy a fairly important and senior position of the Deputy Superintendent of Police, must have grave potential to intimidate and influence the witnesses. At least, the allegations show that the 1st accused was not averse to the prospect of using such contacts, including the contacts with the under world to achieve his objects. Accused 3, 4 and 5 have not been apprehended. But certainly that is not the be-all or end-all while considering the application for bail. The inability of the police to trace accused 3, 4 and 5 cannot ipso facto justify the prayer for continued detention of the petitioners though it is certainly not an irrelevant input in the totality of circumstances.

21. Artificial distinction between the ability of the 1st accused vis-a-vis the 2nd accused to intimidate and influence the witnesses will not be justified. In the facts of the case that potentiality has to be considered of all the accused persons together including the 1st and 2nd accused. Similarly, the mere fact that the 2nd accused who had allegedly handed over the deceased to the other accused to implement their common design was not actually present in the vehicle when the act of murder was committed cannot justifiably deliver to the 2nd accused any undeserved advantage while considering the prayer for grant of bail.

22. Without intending, in any way, to fetter the discretion of the trial court when it is ultimately called upon to appreciate, evaluate, weigh and consider the evidence before it, I feel compellingly persuaded to agree that the allegations against the petitioners and the data collected abundantly justify their continued detention.

23. Having rendered my very anxious consideration to all the relevant inputs, I am certainly of opinion that this is a fit case, considering the nature of allegations, gravity of the offence, materials collected, the interests of a fair trial and all other relevant circumstances, where the petitioners cannot be enlarged on bail at this stage.

24. Of course, there cannot be detention for any indefinite period. There is need for expedition. The Court is informed that an order of committal is expected to be passed on 28.6.05. Proceedings against the petitioners who are not released on bail deserve to be completed expeditiously. The trial has to be held before the senior most Sessions Judge of the District - the Principal Sessions Judge. The case has to be listed for trial expeditiously if it is not earlier terminated by an order of discharge u/s 227 of the Cr.P.C. The learned Sessions Judge must make every endeavour to expeditiously complete the trial. He must also ensure that every reasonable opportunity is given to the petitioners for effective conduct of the defence. Appropriate safeguards will have to be provided by the learned Sessions Judge to ensure that the petitioners are given full and complete opportunity to instruct their counsel and defend themselves in the indictment.

25. It will further have to be observed that if the trial, I mean examination of witnesses, does not commence within a period of three months from this day for reasons not attributable to the accused, they shall be at liberty to move this Court for bail again.

26. With the above observations, these petitions are dismissed.