

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

BAIL APPL..NO. 534 OF 2015 ()

CRIME NO. 958/2014 OF SREEKANDAPURAM POLICE STATION, KANNUR.

PETITIONER/2ND ACCUSED:

**JAMES MATHEW, AGED 53 YEARS,
S/O N.J.MATHEW, NEERACKAL HOUSE,
PUZHATHI AMSOM DESOM, PALLIKUNNU P.O.,
KANNUR DISTRICT.**

**BY SRI.M.K.DAMODARAN, SENIOR ADVOCATE.
ADVS. SRI.M.SASINDRAN,
SRI.A.ARUNKUMAR.**

RESPONDENTS/COMPLAINANT AND STATE:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. THE STATION HOUSE OFFICER,
(CRIME NO.958 OF 2014 OF SREEKANDAPURAM POLICE STATION),
KANNUR DISTRICT-670 631.**

BY SRI.T. ASAF ALI, DIRECTOR GENERAL OF PROSECUTION.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 13-02-2015, ALONG WITH BA. NO. 515 OF 2015, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:**

rs.

B. KEMAL PASHA, J.

.....
B.A. Nos.534 & 515 2015
.....

Dated this the 13th day of February, 2015

ORDER

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Petitions under Section 438 Cr.P.C.

2. Petitioner in B.A. No.534/2015 is the second accused and the petitioner in B.A.No.515/2015 is the 1st accused in Crime No.958/2014 of Sreekandapuram Police Station, Kannur district, pending investigation for the offence punishable under Section 306 IPC.

3. Initially, Crime No.958/2014 was registered under Section 57 of the Kerala Police Act on 15.12.2014 for man missing as Sasidharan, who was the Head Master of a reputed Higher Secondary School at Taliparamba named

Tagore Vidyaniketan Higher Secondary School, was found missing. On 15.12.2014 at 5 p.m., he was found dead as hanged in the bathroom attached to room No.107 of Taj Mahal Lodge near the bus stand at Kasba, Kasaragod. Inquest was conducted.

4. In the inquest, two suicide notes were traced out from the underwear worn by the deceased. One was addressed to the 2nd accused, even though in the caption, it was stated that it should be given to *Mathrubhoomi*, Kannur edition. The other letter was addressed to the 1st accused even though in the caption, it was stated that it has to be given to the *Mathrubhoomi*, Kannur edition.

5. In the letter addressed to the 1st accused, the gist of the contents reveal that the deceased had pointed out the mistakes that were being committed by the 1st accused, who was his subordinate, and instead of correcting those mistakes, the 1st accused had acted against the deceased with a view to trapping him in false case. It was also

mentioned therein that the attempt on the part of the 1st accused was nothing but to bring one Kamalakshan, who is the close associate of the 1st accused, as the successor in office to the deceased. It also reveals that there was a staff meeting, and the 1st accused had severely criticised the deceased, and nobody had supported the 1st accused in the said staff meeting. Further, it was written that the 1st accused was instrumental in his suicide.

6. In the letter addressed to the 2nd accused, the deceased has stated that he is the first martyr of “*Samagra Vidyabiasha Vikasitha Paripadi*” mooted by the 2nd accused in Taliparamba Assembly Constituency. It clearly reveals that over the phone, the 2nd accused had threatened and intimidated the deceased. It further gives an indication that the 2nd accused had taken the words and versions of the 1st accused as granted, and intimidated the deceased without making any enquiry and without hearing other staff members of the school regarding the incident. In the letter,

he has complained that the 2nd accused ought to have enquired about the matter to the other 46 teachers of the school and he was confident that, except the 1st accused and two other teachers, all would have supported the deceased. Further, he had stated that the 2nd accused ought to have enquired about the track records of the 1st accused in the school. He has further complained that, on a proper enquiry, had it been conducted by the 2nd accused prior to the intimidation, the 2nd accused ought not to have implicated him in a case by intimidating him. He has concluded in the letter that only because of that, he has no other go than to end his life and, therefore, he is committing suicide. In both the letters, he has expressed that the curse of his children and his wife would hover around the 1st accused and the 2nd accused, as the deceased had to commit suicide because of their actions.

7. Heard learned Senior Counsel
Sri.M.K.Damodaran and Sri.P.Narayanan for the petitioners

and Sri. Asif Ali, the learned Director General of Prosecutions.

8. The learned Senior Counsel has pointed out that any *mens rea* cannot be attributed on the part of the 2nd accused in the suicide committed by the deceased and, therefore, an offence under Section 306 IPC cannot be attracted. The learned Senior Counsel has relied on the decision in ***Gangula Mohan Reddy Vs. State of Andhra Pradesh [AIR 2010 SC 327]***. The learned counsel for the 1st accused has argued that the 1st accused is in a better position than the 2nd accused and that, at any stretch of imagination, he cannot be dragged into an offence under Section 306 IPC in the matter, as the only allegation against him is that he had told the 2nd accused, ill of the deceased. The learned Senior Counsel has pointed out that no case was registered against the deceased at the instance of the 2nd accused as complained of in the suicide note and, therefore, there could not have been any apprehension in

the mind of the deceased that he would be trapped in a criminal case.

9. *Per contra*, the learned DGP has pointed out that the institution wherein the deceased was working as Head Master, is a reputed institution which had followed the system of conducting entrance examination for admitting new entrants to the school, even though it is a government higher secondary school. The learned DGP has pointed out that from all the past years, the said system of conducting entrance examination for admitting new entrants was being followed at the school with the consent and concurrence of the government and it was not a new phenomenon introduced by the deceased at the school. It has been pointed out that the 2nd accused had severely criticised the system of conducting entrance examination at the school by pointing out that it was against the principles of constitutional norms, and being a government school, every applicants should have been admitted at the school.

10. The learned DGP has pointed out that the investigation so far conducted has revealed that there was a telephonic conversation between the deceased and the 2nd accused on 13.12.2014 and that the 2nd accused had called the deceased over the phone and told him that the 2nd accused had made a submission regarding the procedure being followed in the school, at the Legislative Assembly. It is also pointed out that the witnesses have stated that the 2nd accused had spoken to the deceased about all these in a rough language, and on hearing the threatening language, the deceased was shivering with the phone in his hand by repeatedly murmuring “*Sir, Sir,..*” Of course, any direct evidence may not be possible in the matter as the deceased is no more. The other person involved is the 2nd accused. What has been transpired by the deceased to others regarding the incident assumes importance. Over and above it, the learned DGP has pointed out that the mobile phone made use of by the 2nd accused has to be seized and

investigation should be conducted by making use of it.

11. Over and all of the above, the learned DGP has pointed out that the investigation of this case is in its infancy, that too in the embryonic stage and at this stage, the merits of the matter cannot be decided and anticipatory bail cannot be granted to the accused. The main evidence that can be collected in order to conclude whether there is *mens rea* linked with *actus reus* in the matter, is the circumstantial evidence. Of course, the suicide note lends support to the arguments forwarded by the learned DGP that the contents of the CD *prima facie* reveal the complicity of the petitioners.

12. The learned Senior Counsel has pointed out that the 2nd accused, being a sitting MLA, will not abscond and he will co-operate with the investigation and, therefore, it is just and expedient in the interest of justice to grant anticipatory bail to the 2nd accused. Of course, the mandate of the people assumes importance in democracy and it is true that he has mandate of the voters of the particular

Assembly Constituency. At the same time, that does not mean that he is not amenable to the procedure established by law. His innocence has to be proved through legal means. The fact that he has no involvement in the incident has to come out through a proper investigation, for which I am satisfied that the custodial interrogation of the 2nd accused is required.

13. As far as the 1st accused also is concerned, I am satisfied that the custodial interrogation of the 1st accused is required for the continued investigation of this case in a fair manner. Even according to the learned counsel for the 1st accused, the investigating officer ought to have investigated regarding the conversations, if any, between the 1st accused and the 2nd accused. Of course, the investigating officer has to do it in a fair manner.

14. Considering all the above and the contents of the suicide note presently available and also the contents of the CD made available before this Court, I am satisfied that it

prima facie reveal the complicity of the accused in the offence.

15. The learned Senior Counsel has invited my attention to paragraphs 20 and 21 of the decision in ***Gangula Mohan Reddy*** (*supra*), wherein it was held as follows:-

“20. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

21. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306 IPC, there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

16. It is true that without a positive act on the part of the accused to instigate or aid in the commission of suicide, an offence cannot be brought out under Section 306 IPC. Whether there was any positive act of instigation or aid, is a matter to be investigated into, in the case of both the accused. The learned Senior Counsel has pointed out that it requires an active act or direct act for bringing out *mens rea*, which led the deceased to commit suicide, seeing no option but to commit suicide. The said aspect has to be investigated. At the same time, the circumstances presently point towards such an act; at least the deceased considered that there was such a positive act. The letters *prima facie* reveal that the deceased had thought that he had no other option than to commit suicide. From the point of view of the deceased, such a *mens rea* has to be assessed thoroughly.

17. The learned counsel for the 1st accused has invited my attention to the decision in ***Madan Mohan Singh Vs. State of Gujarat and Another [2010 (8) SCC 628]***,

wherein it was held that-

“ In order to bring out an offence under Section 306 IPC, specific abetment as contemplated by Section 107 IPC, on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC.”

In that particular case, the suicide note had revealed that the deceased was put in an insulting position due to which he began to feel resentment and insult, which resulted in depression. The facts here are not identical to those in the decision noted *supra*. This is not a case wherein he was put to any insult; whereas he has got a clear case that he was intimidated and threatened with dire consequences, for no fault of him, and only by believing the words of the 1st accused.

18. At this stage of investigation, I am satisfied that the

petitioners are not entitled to the discretionary relief of anticipatory bail.

In the result, these bail applications are dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/13/02

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PA to Judge