

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P. JOSEPH

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

CRL.A.No. 283 of 2015 (D)

AGAINST THE ORDER IN CRL.M.C.NO.267/2015 ON THE FILE OF THE SESSIONS COURT, ERNAKULAM DATED 10.2.2015.

CRIME NO. 131/2015 OF HILL PALACE POLICE STATION, ERNAKULAM

APPELLANT: PETITIONER: ACCUSED (UNDER CUSTODY)

TUSHAR NIRMAL SARATHI, AGED 36 YEARS
S/O. T.B. VIJAYASARATHI, 1/395
VARSHA KALPATHI PO
PALAKKAD 2 VILLAGE NOW RESIDING AT ROYAL WEST ENCLAVE
FLAT NO. 8 D, AMBILI NAGAR, TRIPUNITHURA PO
NADAMA VILLAGE

BY ADVS. SRI. K.S. MADHUSOODANAN
SRI. THOMAS CHAZHUKKARAN
SRI. M.M. VINOD KUMAR
SMT. K.M. RAMYA
SRI. P.K. RAKESH KUMAR
SRI. K.S. MIZVER

RESPONDENTS: COMPLAINANT & FORMAL PARTY:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
2. SUB INSPECTOR OF POLICE
HILL PALACE POLICE STATION

BY DIRECTOR GENERAL OF POLICE SRI. ASAF ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.T.SANKARAN &
BABU MATHEW P. JOSEPH, JJ.**

Crl. Appeal No.283 of 2015 (D)

Dated this the 17th day of March, 2015

JUDGMENT

Babu Mathew P.Joseph, J.

This appeal is preferred challenging the order passed by the learned Sessions Judge, Ernakulam in Crl.M.C.No.267 of 2015 filed by the appellant by which his application for granting bail under Section 439 of Cr.P.C. has been dismissed.

2. Heard the learned counsel appearing for the appellant and the learned State Public Prosecutor appearing for the respondents.

3. The appellant is an advocate. He is the accused in Crime No.131 of 2015 of Hill Palace Police Station. The offences alleged against the appellant are under Sections 10 and 13 read with Section 3 of the Unlawful Activities (Prevention) Act. The allegations are that the appellant is a member of a Front Organisation of CPI(Maoist)

Crl. Appeal No.283 of 2015 (D)

:: 2 ::

group, popularly known as “Janakeeya Manushyavakasa Prasthanam”, and there were reasons to believe that he has involved himself in the destruction of properties of Neeta Jalattin Company at Panampilly Nagar and he has close contacts with the second accused involved in that crime. The prosecution also alleges that the appellant was found in possession of several leaflets supporting the views of CPI(Maoist) group. It is further alleged by the prosecution that, during investigation, it was found that the appellant contacted the second accused who has involved in Crime No.113 of 2015 where the offence alleged is under Section 13 of the Unlawful Activities (Prevention) Act. It is also alleged by the prosecution that the intention of the accused was to overthrow the lawfully established Government of India and in that respect the appellant has made repeated attempts. Therefore, the prosecution alleges that the appellant has committed the offences.

4. The appellant was arrested on 30.1.2015. Learned counsel for the appellant submits that the allegations levelled against the appellant are totally misconceived and baseless. He is an Advocate and all his activities are within the limits of established law

Crl. Appeal No.283 of 2015 (D)

:: 3 ::

of the country. Merely based on some wrong impression, the appellant was arrested and produced before Court and, in turn, he was remanded to judicial custody. He has been undergoing incarceration since 30.1.2015.

5. Learned State Public Prosecutor, on the contrary, submits that the allegations levelled against the appellant are not baseless as contended by the learned counsel for the appellant. The prosecution has every reason to believe that the appellant has committed the offences alleged. He further submits that the investigation of the case is duly progressing. As of now, the continued incarceration of the appellant is not essential.

6. We have considered the rival contentions raised by the parties. Learned State Public Prosecutor has fairly submitted that the continued incarceration of the appellant is not essential in this case. At the same time, he insisted the presence of the appellant for the purpose of investigation and at the stage of trial. Admittedly, the appellant has been in jail since 30.1.2015. On considering this fact, the fact that the appellant is an Advocate and the fact that the

Crl. Appeal No.283 of 2015 (D)

∴ 4 ∴

continued incarceration of the appellant is not essential, this Court is satisfied that imposing stringent conditions the appellant can be granted bail.

Therefore, the impugned order passed by the learned Sessions Judge is set aside and the appellant is granted bail imposing the following conditions:

- a) The appellant shall be released on bail on his executing a bond for ₹25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the Sessions Court, Ernakulam.
- b) The appellant shall report before the investigating officer, namely, the Assistant Commissioner of Police, Thrikkakkara, on all Mondays between 9 a.m. and 11 a.m..
- c) The appellant shall surrender his passport before the Sessions Court, Ernakulam. If he does not possess a passport, he shall file an affidavit before the Sessions Court to that effect.
- d) The appellant shall not leave the State of Kerala without the written permission obtained from the Sessions Court, Ernakulam.

Crl. Appeal No.283 of 2015 (D)

∴ 5 ∴

- e) The appellant shall not involve himself in any similar offence while on bail.
- f) The appellant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer.

(K.T.SANKARAN)
Judge

(BABU MATHEW P. JOSEPH)
Judge

ahz/