

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

Crl.MC.No. 2911 of 2012 ()

AGAINST THE ORDER IN CRL.MC 1460/2012 of SESSIONS COURT, ERNAKULAM
DATED 24.7.2012

PETITIONER/COMPLAINANT:

STATE

REPRESENTED BY THE INSPECTOR OF POLICE, C.B.I. S.C.B
THIRUVANANTHAPURAM
(BY THE STANDING COUNSEL FOR C.B.I.
HIGH COURT OF KERALA, ERNAKULAM.)

BY ADV. SRI.P.CHANDRASEKHARA PILLAI - SC FOR C.B.I.

RESPONDENTS/ACCUSED 4 TO 6:

1. SRI. ARUNDAS.V.P.@ CHERIYA AROOTTAN, (A-4),
AGED 27 YEARS,
S/O.VIJAYAN, VALIYAPURAYIL,
NARIKKODE KUNNUMMEL HOUSE, THIRUVANGAD (PO)
THALASSERY, KANNUR. 670 604.

2. SRI. M.K.KALESH @ BABU, (A-5), AGED 34 YEARS
S/O.RAMDAS, MANDOTHUMKANDI VEEDU,
VAYALALAM, UKKANDANPEEDIKA, THALASSERY,
KANNUR. 670 604.

3. SRI. T.M.ARUN KUMAR, (A-6), AGED 32 YEARS,
S/O.CHANDRAN, ARUN NIVAS,
KUTTIMAKKOOL, THALASSERY, KANNUR. 670 604.

R1-R3 BY ADV. SRI.ALAN PAPALI
R1-R3 BY ADV. SRI.SOJAN MICHEAL
R1-R3 BY ADV. SRI.GILBERT GEORGE CORREYA
R1-R3 BY ADV. SRI.NISHIL.P.S.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
16-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 2911 of 2012 ()

APPENDIX

PETITIONER's ANNEXURES:

ANNEXURE-1 TRUE COPY OF THE ORDER DATED 24.7.2012 IN
CRL.MC.NO.1460/2012 OF THE COURT OF SESSIONS JUDGE, ERNAKULAM.

/TRUE COPY/

P.S. TO JUDGE

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K. RAMAKRISHNAN, J.

.....
Crl.M.C.No.2911 of 2012
.....

Dated this the 16th day of January, 2015.

O R D E R

The Investigating agency, Central Bureau of Investigation, (hereinafter referred to as 'the CBI' for short) has challenged the order granting bail to accused 4 to 6 in Crime No.RC.2 (S)/2008/CBI/SCB/Chennai under Sections 482 and 439 (2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code' for short).

2. The case of the prosecution was that one P.K. Fazal @ Muhammed Fazal, an agent of Thejus news paper and a N.D.F activist, was murdered at wee hours on 22.10.2006 at Jagannatha Temple Road, Thalassery. The allegation was that the accused persons conspired together to do away Fazal as he had joined NDF after leaving the political party to which the accused persons were said to be the active workers and sympathizers. The case was originally registered by the local police as Crime No.442/2006 under Section 302 of the Indian Penal Code against unknown persons. Thereafter on 3.11.2006, considering the gravity of the offence and its

impact in the society, the investigation was transferred to CBCID, Kannur and they were initially conducting the investigation and they arrested accused 1 to 3 and they were remanded to custody. Since the investigation was completed, they were granted default bail under Section 167(2) of the Code. Thereafter, the wife of the deceased, Smt. Mariyu, approached this Court by filing a petition under Article 226 of the Constitution of India seeking for CBI investigation and this Court allowed the application and accordingly the case was transferred to CBI for investigation and the Chennai unit of the CBI had taken over the investigation and re-registered the case as RC 2(S)/2008/CBI/SCB/Chennai. During investigation, it was revealed that the the present petitioners were also involved in the crime and they were implicated as accused Nos. 4 to 6 and accused 4 and 5 were arrested on 15.3.2012 and the 6th accused was arrested on 16.3.2012. Thereafter investigation was completed and final report was filed as against six accused persons including the present respondents and the case was committed to the sessions court and now it is now pending as SC.No.405/2012 before the Special Court for

CBI-I (Third Additional Sessions Court), Ernakulam. After filing the final report, the present respondents filed Crl.M.C.No.1460/2012 before the Sessions Court, Ernakulam for regular bail and after hearing both sides, the learned Sessions Judge allowed the application and granted bail imposing certain conditions. This order is being challenged by the investigating agency, CBI, by filing this petition before this Court.

3. Heard Sri. P.Chandrasekharan Pillai, Standing Counsel appearing for CBI and Sri. Alan Papali, the counsel appearing for the respondents in this petition.

4. The Standing Counsel for the CBI has submitted that the sessions judge has not taken note of the graveness of the offence committed by the accused persons before granting bail as contemplated under section 437 of the Code. Further, on the basis of the further investigation conducted, two persons were also found to be involved in the commission of the crime as conspirators and they were added as accused 7 and 8 and it is further revealed that two unknown persons are also yet to be traced out as the persons who had really involved in the

commission of the crime along with the persons who have been arrayed as the accused. Even the allegation against the present petitioners was that it was they who had used the dangerous weapons and brutally attacked the deceased while other accused persons namely accused 1 to 3 have surrounded him. So the actual perpetrators, include the present petitioners, along with two unknown persons, whose identity yet to be revealed. If these persons or some other persons also really involved in the crime could not be traced out and this aspect has not been considered by the sessions judge while granting bail. He had also relied on the decisions reported in **Sanjay Dutt v. State through CBI, Bombay(II)** (1994 (5) SCC 410), **Kalyan Chandra Sarkar v. Rajesh Ranjan Yadav @ Pappu Yadav & another** (2004 (7) SCC 528), **Rajesh Ranjan Yadav @ Pappu Yadav & another v. C.B.I. Through its Director** (2007 (1) SCC 70), **Shahzad Hassan Khan v. Ishtiaq Hassan Khan & another** (1987 SC 1613) and **Masroor v. State of U.P & another** (2009 (14) SCC 286) in support of his case. He had also relied on a decision of the Hon'ble Supreme Court in **Abdul Basit @ Raju & others**

v.Mohd.Abdul Kadir Chaudhari & another (2014 (10) SCC 754) for the proposition that bail can be cancelled only by the higher court and not by the court which granted bail, which prompted them to file the petition before this Court.

5. On the other hand, the learned counsel appearing for the respondents argued that once bail is granted by a court, then higher court must be slow in interfering with the granting of bail. Conditions of cancellation of bail and refusal of bail are standing in different footing. Further, the facts of this case will go to show that the present petition itself was filed by the CBI to stall the application for bail filed by accused 7 and 8, who were subsequently implicated and without any bonafides. Further, after investigation, final report was filed and sessions court has granted bail to them. That order has not been challenged by them as well. There is no allegation that they have violated any of the conditions imposed by the sessions court while granting bail to them. Further, accused 7 and 8 have been granted bail by this Court and supplemental final report has been filed as against them also and that was also committed to the sessions court

and that is also pending before the CBI special court along with the case in which the present petitioners were arrayed as accused. He had relied on the decisions reported in **Dolat Ram and Others v. State of Haryana** (1995 SCC CrL. 237) and **State of Kerala v. Moideen Kunji** (2012 (1) KLT 203) in support of his submissions.

6. Heard both sides.

7. It is an admitted fact that the life of one innocent victim has been taken away on account of some brutal act said to have been committed by the accused persons, who belong to a particular political party and the motive alleged was that the deceased had shifted to another political party from the party in which he was earlier, of which, the alleged accused were also sympathizers and he had become a more active member in NDF political party and they apprehend his coming up in the political arena and wanted to do away with him. For that purpose, they conspired and on the basis of the conspiracy, he had been done away with. Further, those matters are matters for evidence to be considered by the Sessions Judge before whom the case is now pending. The fact that political activity

resulting in crimes including grave crimes are increasing and that fact cannot be ignored by the court. But at the same time political rivalry also may be a reason for false implication, and that possibility also cannot be ignored. However, those are all matters to be considered on the basis of the evidence collected by the investigating agency while considering the case on merit by the trial court. There is no dispute regarding the proposition of law laid down by the Apex Court relied on by the Standing Counsel for the CBI regarding the granting of bail and also proposition of law laid down regarding cancellation of bail or interfering with the bail granted by the Sessions Court by the High Court as relied on by the counsel for the respondents also. Each case has to be considered on the basis of facts of each case.

8. Further in the decision reported in **Mobarak Hussain v. State of Bihar & others** (AIR 2006 SC 178) the Hon'ble Supreme Court has held that normally the High Court should not interfere with the discretion exercised by the court below for granting bail or refusing to grant bail unless there are grounds for varying the same. It is true that, while

granting bail, the court will have to look into the graveness of the crime, participation of the accused, the role played by them and possibility of the accused persons interfering with the investigation of the crime or threatening the witness and temper with evidence collected by the investigating agency. In a case where the investigation has already been completed and final report has been filed, the position will be different unless the court was of the view that leaving them outside is likely to result in threatening the witnesses and interfering with the witnesses coming before the court and giving evidence. But no such grave allegations were made in the application filed by the petitioners.

9. The petitioner's apprehension was that since the CBI is still conducting further investigation in respect of two identifiable persons, according to them, who had also involved in the commission of the crime on the basis of the conspiracy hatched, and for that purpose leaving these persons outside will affect the smooth progress of the further investigation said to have been in progress. It may be mentioned here that accused 1 to 3 were granted default bail. Further, during the

course of investigation till final report was filed against accused 1 to 6 including the present respondents, respondents were in jail and only after final report was filed, the learned Sessions Judge has granted bail to these persons. Further, accused 7 and 8, who have been implicated subsequently on the basis of the further investigation as the alleged conspirators behind the commission of the crime, were also granted bail by this Court after the final report was filed and it was committed to sessions court. It is also mentioned in the counter filed by the petitioners that after committal and taking cognizance by the special court, these petitioners appeared and they were granted bail by that court and that aspect has not been challenged by the petitioners. It was observed in the decisions reported in **State of Kerala v. Moidheen Kunji** (2012 (1) KLT 203), that once the sessions court has already granted bail after committal, then earlier bail order merges with that order and the earlier bail granted cannot be the questioned and that cannot be set aside without challenging the subsequent bail order passed after final report filed by the regular court on their appearance before

the court.

10. It is true while considering the granting of bail under challenge the criteria will continue as to whether sessions court has applied its mind in granting bail. I have gone through the order passed by the learned Sessions Judge. The learned Sessions Judge in paragraph 5 of the impugned order categorically stated the graveness of the crime and also considered the apprehension of the Public Prosecutor in granting bail to the petitioners and it is thereafter that the bail application has been allowed and bail was granted with stringent conditions. The Standing Counsel for CBI has no case that any of the bail conditions were violated by the petitioners after they are enjoying the bail granted by the sessions court. It has to be remembered that bail is the rule and jail is an exception. It is true that in some of the decisions, the Hon'ble Supreme Court has observed considering the graveness of the offence enlarging the accused on bail may affect trial of the case and in such cases the period of pre-trial detention is not a criteria to grant bail. But such a graveness has not been made in this case. Merely because

some identifiable persons are yet to be traced out, according to the prosecution, is not a ground for denying the bail to a person in respect of whom investigation has been completed and final report has been filed and that cannot be a ground for setting aside the bail already granted by the Sessions Court. I do not find any illegality committed by the court below in passing the impugned order granting bail to the petitioners warranting interference at the hands of this Court to reject the same. So, the petition lacks merits and the same is liable to be dismissed.

In the result, this petition is dismissed.

Sd/-

K. RAMAKRISHNAN, JUDGE.

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/true copy/

P.S to Judge

