IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 21ST DAY OF MARCH 2024 / 1ST CHAITHRA, 1946

BAIL APPL. NO. 1049 OF 2024

CRIME NO.478/2012 OF Mangalapuram Police Station, Thiruvananthapuram

AGAINST THE ORDER/JUDGMENT DATED IN SC NO.201 OF 2023 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - IV, THIRUVANANTHAPURAM

PETITIONER/ACCUSED NO.1:

GOPAKUMAR @ KANNAN
AGED 34 YEARS
S/O GOPINATHAN, RESIDING AT GOPALAKRISHNA MANDIRAM, PUTHEN NADA ANCHUTHENGU, KADAKKAVOOR, THIRUVANANTHAPURAM DISTRICT, PIN – 695001.

BY ADVS.
J.R.PREM NAVAZ
PREETHA RANI M.S.
SUMEEN S.
MUHAMMED SWADIQ

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM, PIN – 682031.

BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
ADDL.DIRECTOR GENERAL OF PROSECUTION(AG-11)
ADDL. STATE PUBLIC PROSECUTOR(AG-28)

SR PP K DENNY DEVASSY

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 05.03.2024, THE COURT ON 21.03.2024 DELIVERED THE FOLLOWING:

A. BADHARUDEEN, J.

==========

B.A. No.1049 of 2024

==========

Dated this the 20th day of March, 2024

O R D E R

This is the second application for regular bail filed by accused No.1 in crime No.478/2012 of Mangalapuram Police Station, Thiruvananthapuram, now pending as S.C.No.201/2023 on the files of Additional Sessions Court-IV, Thiruvananthapuram, under Section 439 of the Code of Criminal Procedure.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor in detail. Perused the relevant materials form part of the case diary including the history of the case pointed out by the learned Public Prosecutor.

3. In this matter, the prosecution case is that, accused Nos. 1 to 3 committed murder of one Prakasan after taking him inside an autorickshaw bearing registration No. KL-16-H-3908,

driven by the 4th accused. Accordingly, crime alleging commission of offences punishable under Sections 302, 201 r/w 34 of IPC as well as under Section 3(1) r/w 181 of Motor Vehicles Act was registered and thereafter Final Report also was filed on 30.10.2013.

4. Highlighting custody of the petitioner from 19.12.2022, the learned counsel for the petitioner pressed for regular bail to the petitioner. This is the only change of circumstance pointed out by the learned counsel for the petitioner, who pressed for grant of regular bail to the 1st accused for the second time.

5. Strongly opposing grant of regular bail to the petitioner, the learned Public Prosecutor submitted that the petitioner absconded, for a period of 10 years and that is the reason why this Court dismissed the earlier bail application. Therefore, there is absolutely no change of circumstances to take a lenient view.

6. While dismissing the earlier application for regular bail, in paragraphs 6 and 7 this Court observed as under:

"6. On perusal of the case records, the arguments advanced by the learned Public Prosecutor could be seen, prima

facie. In this case, the petitioner was earlier arrested on 04.07.2012 and he had executed bail bond to appear before the Court without fail to facilitate trail. But the petitioner absconded for a long period of ten years. Accordingly, his case was included in the long pending register (L.P.No.23/2018) and the petitioner was arrested after ten years as on 19.12.2022. The allegation against the petitioner is commission of offence of murder.

7. In criminal prosecution availability of witnesses within a reasonable time is an important criteria to effectuate fair trial. The absconsion of the petitioner for a pretty long time in fact would affect fair trial since likelihood of availability of witnesses may loose during the long period of time. Therefore, the petitioner, who absconded for a period of ten years cannot be released on bail for any reason and his trial shall be completed keeping him in custody."

7. On perusal of the records, including the report of the Investigating Officer, though it is discernible that accused Nos.2 and 3 were acquitted as per judgment in S.C.No.226 of 2015 dated 22.10.2020, the case of the 1st accused is a matter which requires adjudication by evidence. Since the petitioner is a person absconded for 10 years, if he will be released on bail he would abscond and his presence for trial could not be secured. Therefore, the petitioner cannot be released on bail.

Accordingly this bail application stands dismissed.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF BAIL APPL. 1049/2024

PETITIONER'S ANNEXURES

Annexure A1	**THE TRUE COPY OF THE JUDGMENT DATED 22.10.2020 PASSED BY THE COURT OF ADDITIONAL SESSIONS COURT-IV, THIRUVANANTHAPURAM IN S.C. NO: 226 OF 2015**
Annexure A2	**THE TRUE COPY OF THE ORDER DATED 05.04.2023 IN B.A NO: 2106 OF 2023 PASSED BY THE COURT OF ADDITIONAL SESSIONS COURT-IV, THIRUVANANTHAPURAM**
Annexure A3	**THE TRUE COPY OF THE ORDER DATED 27.11.2023 IN CRL.M.C. NO: 6078/2023 PASSED BY THE COURT OF ADDITIONAL SESSIONS COURT-IV.**