IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 30TH DAY OF JULY 2024 / 8TH SRAVANA, 1946

BAIL APPL. NO. 4159 OF 2024

CRIME NO.353/2023 OF CANTONMENT POLICE STATION, THIRUVANANTHAPURAM

PETITIONER/ACCUSED:

AKBAR SHAH,
AGED 48 YEARS
S/O. BASHEER,SASTHA NIVAS,
CHARUVILA VEEDU, PALAMKONAM,
KEEZHATTINGAL, CHIRAYINKEEZHU VILLAGE,
THIRUVANANTHAPURAM, PIN - 695306

BY ADVS.
G.SUDHEER
R.HARIKRISHNAN (H-308)
SMRITHI S.S.

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

BY SRI C S HRITHWIK
SENIOR PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Dated this the 30th day of July, 2024

O R D E R

The application is filed under Section 439 of the Criminal Procedure Code, 1973, by the sole accused in Crime No. 359/2023 of the Cantonment Police Station, Thiruvananthapuram, which is registered against him for allegedly committing the offences punishable under Sections 324, 326, 302 and 201 of the Indian Penal Code (in short, 'the IPC'). The petitioner was arrested and remanded to judicial custody on 12.04.2023.

2. The essence of the prosecution case is that: on 05.04.2023, at around 23.22 hours, the accused, due to his previous animosity towards Shafeek (the deceased), hit the deceased on his head with an interlocking brick, while he was sleeping on the Palayam-Pattoor road, and he suffered fatal injuries and lost his life on 14.04.2023. Thus, the accused has committed the above offences.

3. Heard; Sri. G.Sudheer., the learned counsel appearing for the petitioner and Sri. C.S. Hrithwik, the

learned Public Prosecutor.

4. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. There is no material to substantiate that the petitioner has committed the above offences. The Investigating Officer has deliberately planned the petitioner as an accused in the case and has incorporated Sections 302 and 326 of the IPC to see that the petitioner is incarcerated. The matter is a clear case of mistaken identity. It is only because the petitioner has antecedents, that the Investigating Officer has made the petitioner an accused in the crime. The petitioner is the sole breadwinner of his family. The petitioner has been in judicial custody since 12.04.2023, and the trial in the case has not commenced. Therefore, the petitioner's fundamental right to life stands infringed. Hence, the application may be allowed.

5. The learned Public Prosecutor seriously opposed the application. The Investigating Officer has filed a bail

objection report, inter alia, contending that the petitioner had previous animosity with the deceased and that he had abused the mother of the deceased at the Sharkara temple. Consequently, on the uneventful day, the petitioner assaulted the deceased with an interlocking brick and caused fatal injuries to him, and he succumbed to injuries on 14.04.2023 at the Medical College Hospital, Thiruvananthapuram. The incriminating materials have been recovered. The petitioner is an inveterate offender since he is involved in 12 other crimes of various police stations in Thiruvananthapuram. He submitted that if the petitioner is enlarged on bail, there is every likelihood of him committing a serious offence, intimidating the witnesses, tampering with the evidence, and also fleeing from justice. Moreover, it would also send a wrong message to society. Hence, the application may be dismissed.

6. The prosecution allegation against the petitioner is that, out of his previous animosity towards

the deceased, on 05.04.2023, the petitioner assaulted the deceased with an interlocking brick by hitting him on his head, and he succumbed to the injuries on 14.04.2023. The investigation has revealed that it was the petitioner who committed the above offences. It is also reported that the petitioner is a habitual offender since he is involved in the following crimes:

Serial No.	Crime Nos.	Police Stations
1	489/2022	Kadakkavoor
2	1790/2022	
3	52/2007	
4	253/2007	
5	165/2014	
6	359/2015	
7	669/2016	
8	470/2007	Varkala
9	862/2022	Medical College
10	1017/2022	
11	452/2007	Attingal
12	651/2023	Vanchiyoor

It is also reported that the petitioner was convicted in Crime No. 165/2014 and sentenced to undergo simple imprisonment for a period of six months. The above statistics indisputably reveal that the petitioner is a person with criminal antecedents.

7. In **Prasanta Kumar Sarkar v. Ashis Chatterjee** [(2010) 14 SCC 496], the Honourable Supreme Court has laid down the following broad parameters while considering a bail application, namely:

> "9.....However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence (ii) nature and gravity of the accusation (iii) severity of the punishment in the event of conviction (iv) danger of the accused absconding or fleeing, if released on bail (v) character, behaviour, means, position and standing of the accused (vi) likelihood of the offence being repeated (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail".

8. Likewise, in **Gurucharan Singh Others v. State (Delhi Administration)** [(1978) 1 SCC 118], the Honourable Supreme Court observed that the larger

interests of the public or the State must be considered when considering an application for bail.

9. Furthermore, in **Ash Mohammad v. Shiv Raj Singh @ Lalla Babu & Another** [(2012) 9 SCC 446], the Honourable Supreme Court has opined that societal concern has to be kept in juxtaposition with individual liberty and social concern deserves to be given priority over lifting the restriction on liberty of the accused.

10. The law has thus crystalised that while deciding an application for bail under Section 439, the courts are obliged to look into the nature, gravity and seriousness of the crime, the potential severity of the punishment that is likely to be imposed, the character, behaviour and standing of the accused, the prosecution’s legitimate apprehension regarding the tampering of evidence, the flight risk of the accused and whether releasing the accused on bail would have a deleterious impact on the society.

11. After bestowing my anxious consideration of the

facts, the rival submissions made across the Bar, and the materials placed on record, and particularly on considering the nature, seriousness and gravity of the accusations levelled against the petitioner, that there are prima facie materials to substantiate the petitioner's involvement in the crime, that the petitioner is a habitual offender, and that the reasonable apprehension projected by the prosecution that if the petitioner is enlarged on bail, there is every likelihood of him intimidating witnesses and tampering with the evidence, I am not satisfied that the petitioner has made out any convincing grounds to invoke the extraordinary jurisdiction of this Court under Section 439 of the Code. The application is meritless and is only to be dismissed.

Resultantly, the application is dismissed.

Sd/-

mtk/30.07.2024. **C.S.DIAS, JUDGE**