

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 4TH DAY OF JANUARY 2023 / 14TH POUSHA, 1944

BAIL APPL. NO. 10235 OF 2022

CRIME NO.586/2022 OF KADAVANTHRA POLICE STATION

PETITIONER/ACCUSED NO.3:

LAILA BHAGAVAL SINGH
AGED 59 YEARS, W/o.BHAGAVAL SINGH
KADAKAMPALLIL HOUSE
KARAMVELI P.O, ELANTHOOR
PATHANAMTHITTA, PIN - 689643

BY ADVS.

SRI.BIJU ANTONY ALOOR
SRI.K.P.PRASANTH
SMT.T.S.KRISHNENDU
SMT.ARCHANA SURESH
SRI.JINSON JACOB
SRI.MOHAMED AMEER M.

RESPONDENTS/COMPLAINANTS:

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

2 STATION HOUSE OFFICER
KADAVANTHRA POLICE STATION.
ERNAKULAM DISTRICT, PIN - 602020

BY ADVS.

SRI.T.A.SHAJI, DIRECTOR GENERAL OF PROSECUTION

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
23.12.2022, THE COURT ON 04.01.2023 PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

B.A. No.10235 of 2022

Dated this the 4th day of January, 2023

ORDER

Petitioner is the third accused in Crime No.586/2022 of the Kadavanthara Police Station, Ernakulam alleging offences punishable under sections 120B, 364, 302 and 201 r/w section 34 of the Indian Penal Code, 1860. She has filed this application for regular bail under section 439 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.').

2. A complaint filed on 27.09.2022 about a missing woman was being investigated by the police. Soon, it revealed a ghastly crime committed allegedly by three persons. The victim, in this case, is a 52 year old lady by the name of Padma.

3. According to the prosecution, the first accused abducted the deceased Padma, pursuant to a conspiracy with the second and third accused to commit human sacrifice. The second and third accused are husband and wife. They were eager to gain financial prosperity and were convinced by the first accused that, human

sacrifice was the mode to attain their prosperity. It is further alleged that, after abducting the deceased Padma from Ernakulam, the first accused took her to the house of the second and third accused where she was subjected to severe torture. After rendering the victim unconscious by strangulating her with a plastic rope, the third accused removed the clothes of the deceased and the first accused inserted a sharp knife into her vagina, as part of the sacrifice, while the victim was alive. Wounds were inflicted on the victim's stomach, and breasts and she was finally murdered by slitting her throat. Thereafter, her body was cut into 56 pieces and buried inside their house compound. The prosecution also alleges that a pit was dug as part of the pre-arranged plan and after destroying the other evidence, the first accused pledged the gold ornaments of the deceased in a financial institution at Ernakulam and thus the accused together committed the offences.

4. Sri.B.A.Aloor, learned counsel for the petitioner contended that the prosecution story against the petitioner, who is the third accused, is unbelievable, and there is nothing to connect the petitioner with the crime. The learned counsel also submitted that even if the entire prosecution story is admitted, the petitioner can

only be regarded as a spectator to the alleged crime and that, as a woman, she ought to be given the benefit of the proviso to section 437 of the Cr.P.C. Reliance was placed on the decision of the Karnataka High Court in **Nethra v. State of Karnataka** (Crl. Petition No.2306 of 2022). Learned counsel also submitted that the petitioner has been arrayed as an accused only due to the undue publicity generated by the media and that there were no incriminating materials recovered against the petitioner to show her participation or involvement in the alleged crime.

5. The learned counsel for the petitioner also submitted that petitioner has no antecedents and has been a housewife all along and that considering her date of arrest (11.10.2022), the continued detention ought not to be permitted. Relying upon the decisions in **Dataram Singh v. State of Uttar Pradesh and Another** [(2018) 3 SCC 22], and **Jollyamma Joseph v. State of Kerala** (2021 (1) KLT 674) it was argued that when there was no possibility of the accused absconding, a humane approach ought to be adopted. Reference was also made to the decision in **Arnesh Kumar v. State of Bihar and Another** [(2014) 8 SCC 273], to contend that the balance between individual liberty and social order must be maintained. It

was further argued that no recovery has been effected on the basis of any statement given by the petitioner and hence the statements cannot be used as evidence in the trial.

6. Sri.T.A.Shaji, learned Director General of Prosecution on the other hand submitted that petitioner had an active role in the murder and materials have been gathered during investigation, revealing her involvement in the brutal murder, that too, as an active participant. It was also submitted that several materials were recovered on the basis of the statements given by the third accused and all those statements are admissible as evidence under section 27 of the Indian Evidence Act, 1872. Reference was made to the decision in **Mehboob Ali and Another v. State of Rajasthan** [(2016) 14 SCC 640]. According to the learned Director General of Prosecution, the DNA results of the victim, the recovery of various parts of her body chopped into 56 pieces, and other materials recovered on the basis of the statement given by the third accused clearly indicate her active involvement in the crime. It was also submitted that many of the witnesses are relatives of the accused and therefore releasing her on bail would cause great prejudice. Apart from the above, it was pointed out that petitioner is also accused of another crime of

murdering another lady, on almost similar allegations of human sacrifice and had even indulged in cannibalism.

7. I have considered the rival contentions and also perused the case diary.

8. The Supreme Court has, in numerous decisions, considered the principles that should guide a court while considering an application for bail. The decisions in **Prahlad Singh Bhati v. NCT, Delhi** [(2001) 4 SCC 280], **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and Another** [(2004) 7 SCC 528], and **State of U.P through CBI v. Amarmani Tripathi** [(2005) 8 SCC 21] are some of them. The eight basic factors that can be culled out from the various decisions which must guide the Courts 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 justice, being thwarted by the grant of bail.

9. Petitioner is the third accused in this ghastly crime.

Prosecution alleges that she was present at the time of the commission of the offence and even played an active role in the horrific crime. The circumstances, prima facie, reveal that petitioner had actively participated in the alleged crime. Several materials have been recovered based on the statement given by the accused. The contention of the learned counsel for the petitioner that not a single item of recovery was effected based upon any statement given by the accused is incorrect, as evident from the records of the case. Whether those statements are admissible in evidence or not is a matter of appreciation, at the time of trial. Suffice to say, there are materials connecting the petitioner to the crime, atleast prima facie.

10. The offences alleged against the petitioner and other accused apparently reveal a human sacrifice. It is, no doubt, a horrendous crime. An innocent lady was enticed and abducted and allegedly taken to the house of accused 2 and 3, and after piercing a sharp object into her vagina, while she was alive, the accused are alleged to have performed a ritual before committing the murder. The third accused had also allegedly participated in the crime, actively. The body of the deceased was chopped into 56 pieces, and the body parts were recovered from the compound of the house of the second

and third accused. The nature and gravity of the accusation are gruesome, apart from being shocking.

11. The investigation is still continuing, and the final report has not yet been filed as on the date of hearing. Though it was submitted that the final report would be submitted soon, petitioner has been under detention since 11.10.2022. Petitioner and other accused are also alleged to have committed another crime in an almost identical manner, and the said case is also under investigation. If the petitioner is released on bail, there is every chance that she may influence the witnesses. If bail is granted, there is the stark reality of justice being thwarted. Thus the circumstances do not lean in favour of the grant of bail to the petitioner.

12. However, petitioner is a woman. The proviso to section 437 Cr.P.C confers a benefit to four different categories of persons, of which one category is women. Section 437 Cr.P.C states that if there are reasonable grounds for believing that a person is guilty of an offence punishable with death or imprisonment for life, such person shall not be so released on bail. The first proviso to section 437 of the Cr.P.C states that the Court may direct that such a person be released on bail if the person is a woman or is sick or is infirm.

Therefore the beneficial provision relating to the release of an accused on the ground of being a woman has also to be kept in mind while considering this bail application.

13. Though the proviso to section 437 Cr.P.C provides for the grant of benefit to the woman while considering an application for bail, the words used in the statute is “court may”. The use of the word makes it explicit that the benefit to be given to a woman is not mandatory. It is discretionary. The discretion continues to remain with the Court in the matter of grant of bail, even when the accused is a woman. Merely because the accused is a woman, Court cannot ignore the other aspects like the nature and gravity of the offence, the possibility of influencing the witnesses, the likelihood of the offence being repeated and the danger of justice being thwarted. Though a beneficial provision as the first proviso, to section 437(1) Cr.P.C, is in existence, it does not mean that persons specified in the proviso should necessarily be released on bail. The first proviso to section 437(1) Cr.P.C, is only an enabling provision as observed by the Supreme Court in **Prahlad Singh Bhati v. NCT, Delhi** [(2001) 4 SCC 280].

14. The circumstances of the case, as mentioned earlier, are

horrifying. The active involvement of the petitioner in the crime and in another crime is asserted by the prosecution and the materials collected, prima facie reveal her involvement in the present crime. The various circumstances of the case are overwhelmingly leaning against the petitioner, and the benefit of the proviso to section 437 Cr.P.C cannot be exercised in her favour.

15. Having regard to the circumstances of the case and also taking note of the prima facie involvement of the petitioner in the crime, I am of the view that this is not a fit case where the petitioner can be released on bail.

Accordingly, I dismiss this bail application.

**BECHU KURIAN THOMAS
JUDGE**

vps