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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 16TH DAY OF AUGUST 2024 / 25TH SRAVANA, 1946

BAIL APPL. NO. 6068 OF 2024

CRIME NO.442/2019 OF THODUPUZHA POLICE STATION, IDUKKI

AGAINST THE ORDER/JUDGMENT DATED IN BAIL APPL.

NO.5215 OF 2023 OF HIGH COURT OF KERALA

PETITIONER(S)/ACCUSED:

XXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX

BY ADV. K.RAKESH

RESPONDENT(S)/STATE & COMPLAINANT:

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

2 XXXXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX

BY ADV.SRI.GRASHIOUSE KURIAKOSE, ADGP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 16.08.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



CR

P.V.KUNHIKRISHNAN, J

B.A. No. 6068 of 2024

Dated this the 16th day of August, 2024

O R D E R

'Bail is the rule and jail is an exception' is a settled position of law. But if there are materials to show that an accused is purposefully trying to protract the trial, whether he is entitled to bail, is the question to be decided in this case.

2. Petitioner is the accused in Crime No.442/2019 of the Thodupuzha Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 294(b), 323, 326, 506(i), 302, 201 and 212 of the Indian Penal Code and Section 75 of the Juvenile Justice (Care and Protection of Children) Act. The petitioner filed this bail application under Section 483



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of Bharatiya Nagarik Suraksha Sanhita.

3. The prosecution case is that, the 1st accused is a relative of one Biju, who was the husband of the original 2nd accused. Biju died due to a heart attack. Thereafter, the original 2nd accused fell in love with the 1st accused, who is the petitioner herein. Subsequently, the original 2nd accused and the petitioner started to live together in a house. The original 2nd accused had two children in her relationship with her former husband Biju. While the 1st accused and the original 2nd accused were living together, on 27.03.2019, midnight at about 1.30 am, while the children were asleep, the accused locked the house and went out. It is alleged that when they returned by 3 am and woke up the children, the younger child was seen to have urinated in his trousers. It is alleged that the 1st accused asked about the same to the elder child and abused him, brutally manhandling him by kicking and



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beating him. It is alleged that the petitioner kicked the deceased victim boy aged 7 years, lifted and smashed him on the floor and thereafter gave a blow aiming at his head using a dumbbell and caused a fracture on his ribs and thereafter, he threw him towards the gap in between the almirah and the wall of the bedroom and thereafter he stamped him causing injury on his head. Thereafter he dragged the victim through the floor aiming his head to hit at the leg of the cot with an intention to cause death. As a result of that, the small minor boy sustained serious injuries including intracranial injury and hemorrhage. When the mother of the victim who is the original 2nd accused intervened, the 1st accused fisted on her face and caused injuries. Subsequently, they took him to the Chazhikkad Hospital at Thodupuzha, wherein it was revealed that the boy sustained serious injuries. But the accused deliberately delayed the treatment of the injured



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child and as a result of the same, the victim succumbed to the injuries at MOC Medical College Hospital at Kolencherry. Hence it is alleged that the accused committed the offence. The 2nd accused subsequently became the approver and, she and the other child are the witnesses in the case.

4. This bail application is filed mainly on three grounds. The first ground is that the petitioner is in custody from 30.03.2019 onwards and therefore the petitioner may be released on bail. The second ground is that the mother of the petitioner is seriously laid up and there is nobody to look after her, and therefore, the petitioner may be released on bail. The third ground is that the petitioner is suffering from different illnesses and for better treatment, he may be released on bail.

5. The learned Public Prosecutor seriously opposed the bail application and filed an objection in which several



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facts are narrated.

6. It is an admitted fact that the petitioner filed several bail applications before this Court. This Court refused all those bail applications. Now the petitioner is in custody for about 5 years. In such circumstances, this Court directed the trial court to submit a report about the present stage of the main case. The trial court submitted a detailed report on 30.07.2024. It will be better to extract the same:

“In response to the reference cited above I may submit that accused in Cr.No.442/2019 of Thodupuzha police station, pending before this Court as SC.536/19 stands charge sheeted alleging offences punishable u/s.294(b),323, 326, 506(i),302, 201 and 212 of IPC and u/s.77 of JJ Act. I may submit that I took charge of this Court on 18.05.2024 and I am submitting this report after perusing the case records. I may submit that trial in this case is not yet started. Several adjournments are seen given on the request of the accused to engage a counsel of his choice and for changing the counsel. He is not ready to accept free legal aid provided to him. Accused has



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raised a claim for translated copies of the prosecution records stating that he can not read or write Malayalam. Accordingly as per the order dated 27.01.2024 prosecution was directed to furnish the copies of all prosecution records translated to English. Prosecution sought for an adjournment for challenging the order dated 27.01.2024 stating the reason that accused is well conversant with Malayalam and the only attempt is to protract the proceedings. Later they have not challenged the order dated 27.01.2024 and provided the translated copies to the accused. I may report that the accused has repeatedly changed the counsel engaged by him and on the last posting on 06.07.2024 when produced online he raised some complaints against the bail order already passed and submitted that he is not interested in engaging any advocate for conducting his case and that he need the help of advocate only for the purpose of submitting bail applications. Now case stands posted on 24.08.2024 for framing charge. Yesterday I have received a complaint forwarded to this Court by the accused through Superintendent, Central Prison, Thiruvananthapuram alleging that translated copy of final report served on his temporary counsel Sri.Benny (word used in the complaint) is an incomplete one and requested to give direction to the prosecution to give a complete set of translated copy of final report. I have



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already given a direction to the special public prosecutor to verify the same and to provide the translated copies of entire prosecution records to the accused. I may report that accused has not engaged any new counsel to conduct his case and is not ready to accept free legal aid also. I may submit in this regard that accused is not ready to cooperate with the Court and to face the trial. He has been filing applications repeatedly for releasing him on bail. His attempt is to avoid custodial trial. This report is for the favour of kind information and necessary direction.”

7. From the above it is clear that the petitioner is not cooperating with the trial. The objection filed by the Deputy Superintendent of Police, Thodupuzha is also to be extracted hereunder:

“3. There is no bonafides in the bail application filed by the petitioner. The petitioner intentionally suppressed the various prior applications filed by him before this honourable court as well as before the Trial Court. The conduct of the petitioner would show that he has deliberately dragging the case in order to avoid materializing of the trial of the case. Earlier, he had urged before the honourable court below stating that he is not engaging any lawyer and wanted to conduct the trial of



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the case by himself and under the guise of that he filed a petition before the court below to the effect that he is not conversant with Malayalam language (Regional Language) and urged the court below to get a translated copy of the record in English. When the then judge of the Trial court got transferred, immediately thereafter he engaged a new counsel. The petitioner is a keralite. He is born and brought up in Kerala. During the conduct of POCSO Trial in S.C 296/2019 before the Thodupuzha POCSO Court, he never raised a contention that he is not conversant with the Malayalam Language. He had participated in the trial and even he has answered the 313 examinations in the Malayalam language and also filed a separate statement u/s 313 (5) of the Cr.PC. He has no bonafides in submitting that he is not conversant with the Malayalam language. Moreover, he is being represented by a lawyer who is conversant with Malayalam Language. Even the prosecution has supplied the translated copies of all the records to the petitioner and neither he nor his lawyer has raised any such complaints before the court below with regard to that at that time. So the new contention is the result of an afterthought and lacks merit.

4. History of this case would show that he engaged several lawyers at different point of time in a short while. All those tactics were availed by him to protract the trial of the case. Now the charge in this case has already been



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framed as early as on 17/09/2022, and the case was posted for scheduling. However in the mean time, the petitioner approached this honourable Court against the order of the Trial Court granting pardon and making A2 as an approver in this case and also against the charge framed against him. Since the matter was stayed by this honourable court, the Trial court could not proceed further. On 28/01/23, since this honourable court has vacated the stay. On the very next posting of the case before the Trial court, he filed a petition before the Trial Court and sought for time on the ground that he wanted move a CrL.MC before the honourable High Court for Re-investigation of the case and also he sought a time for engaging a new counsel for the trial of the case. Thereafter, he engaged several lawyers on a short while as a tactics. On each occasion when the court wants to proceed further, he will remove his lawyer and were seeking time for appointing new lawyers. His only intention was to compel the Trial court by on petition or other as a tactics to protract the trial of the case. After resorting to all the other tactics, as a last resort he filed a petition stating that since he is not conversant with the Malayalam Language, he needs a translated copy of all the records into English. Though the prosecution opposed it, the court below directed the prosecution to supply it. In the mean time the presiding officer of the court was



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transferred and thereafter, he filed a new bail application before the Trial court and before hearing that application, the prosecution had served the translated copies and thereafter the trial court has heard the bail application and had passed the impugned order dismissing the bail application.

5. The most important occurrence witnesses in this case are the Approver and CW2, who is an 8 year old minor boy. Approver is the lady who was his companion and the mother of the deceased child, both these witnesses are vulnerable and fragile and they could be easily cowed down, threatened, influenced and also even be annihilated.”

8. From the report of the learned Sessions Judge and also from the objection raised by the Deputy Superintendent of Police, Thodupuzha, it is clear that the petitioner is purposefully protracting the trial of the case. The prosecution case against the petitioner is very serious and it is disturbing and affecting the conscience of the society. The alleged acts of the petitioner are all heinous. The prosecution case is that, a small kid is brutally



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attacked by the petitioner at midnight for the simple reason that, he has not looked after his younger brother who urinated in the trousers. The alleged acts of the petitioner are narrated by me in paragraph 3 of this order while narrating the prosecution case. I don't want to make any further opinion about the same. The allegation in this case really affected the conscience of the entire society in Kerala. But of course, it is a matter to be proved by the prosecution by adducing evidence.

9. From the report of the trial court and also from the report of the Public Prosecutor, it is clear that the petitioner is purposefully protracting the trial. Admittedly, the petitioner is a Malayalee. According to him, he cannot read and write Malayalam. Therefore, he wants to translate the entire charge sheet into English. The petitioner was an accused in S.C. No.296/2019 also. The petitioner never raised any contention that he is not



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conversant with Malayalam language in that trial, is the submission of the prosecution. According to the prosecution, the petitioner had participated in the trial and even he has answered Section 313 Cr.P.C questions in the Malayalam language and also filed a separate statement under Section 313(5) Cr.P.C. Therefore, it is submitted by the prosecution that the petitioner is trying to protract the case unnecessarily. Now the prosecution already supplied the English translated charge sheet to the petitioner. The prosecution and the trial court are ready to start the trial. But the petitioner is engaging lawyers only to file bail applications and he submitted that he does not want the assistance of lawyers for conducting the trial. He is not ready to accept the legal aid also. Now the petitioner prays for a bail.

10. The first ground is that the petitioner is in custody from 2019 onwards. But the petitioner was



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convicted and sentenced by the POCSO Court at Thodupuzha for offence under Sections 9 and 10 of the POCSO Act in S.C. No.296/19. He was sentenced to undergo imprisonment for 21 years and to pay a fine of Rs.3,81,000/-. In the report submitted by the prosecution, it is stated that the petitioner is undergoing imprisonment in that case. There is no suspension of the sentence by the appellate court. If that be the case, the continuation of the petitioner for five years in jail in this case is not relevant. Moreover, if there are prima facie materials to prove that, an accused is deliberately protracting the trial, he is not entitled to bail as of right. The general principle of bail in law, that is, 'Bail is the rule and jail is an exception' is not applicable to such accused. The right to bail is not absolute. The court has to consider the bail application based on the facts of each case, of course keeping in mind the general principle that, 'Bail is



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the rule and jail is an exception'. In this case, there are prima facie materials in the light of the report of the trial court and also from the submission of the prosecution that the petitioner is deliberately protracting the trial. Hence he is not entitled to bail.

11. The other contention raised by the petitioner is that the mother of the petitioner is seriously laid up and therefore he may be released on bail. The petitioner produced a medical certificate to show that his mother needs his help. The Professor and Head of the Department of Pulmonary Medicine, Government Medical College, Trivandrum issued Annexure B certificate to the effect that the mother of the petitioner needs further detailed evaluation and investigation and consent for considering various treatment options for which the presence of her son is essential. This Court directed the Public Prosecutor to verify the genuineness of Annexure B certificate issued



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by the Head of the Department of Pulmonary Medicine, Government Medical College, Trivandrum. The Additional Director General of Prosecution submitted before this Court that a statement was recorded from the Doctor who issued Annexure B and he submitted that the said certificate was obtained by misleading him. That itself shows that the petitioner is ready to do anything to get bail from this Court. Moreover, the Additional Director General of Prosecution also submitted that the petitioner has a brother, who is in the Army, and he is very much available for the treatment of his mother. Therefore the contention of the petitioner that he is entitled to bail because his mother is seriously laid up, cannot be accepted. It is lastly submitted by the petitioner that he is also having some health issues and therefore, he may be released on bail. But the jail authorities will take care of the same by giving proper treatment in accordance



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with the law.

12. Moreover, the 2nd accused in this case is now an approver. She was the partner of the petitioner. She and her minor son are the witnesses in this case. According to the prosecution, both these witnesses are vulnerable and fragile and they could easily be cowed down, threatened, influenced and also even be annihilated, if the petitioner is released on bail. I think there is force in the above argument of the prosecution. Therefore, I am of the considered opinion that the petitioner is not entitled for bail and the petitioner has to face trial in custody. Therefore, there is no merit in this bail application.

Accordingly, the bail application is dismissed.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE



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APPENDIX OF BAIL APPL. 6068/2024

PETITIONER ANNEXURES

ANNEXURE F	TRUE COPY OF THE ORDER DATED 07-07-2023 IN BAIL APPL.5215/2023 OF THIS HON'BLE COURT
ANNEXURE 2	ORDER DATED 24-02-2023 IN BAIL APPL.1687/2023 ON HIGH COURT
ANNEXURE 3	ORDER DATED 05-12-2022 IN BAIL APPL.9764/2022 ON HIGH COURT
ANNEXURE 4	ORDER DATED 24-11-2022 IN BAIL APPL.8934/2022 ON HIGH COURT
ANNEXURE 5	ORDER DATED 08-04-2022 IN BAIL APPL.2871/2022 ON HIGH COURT
ANNEXURE 6	ORDER DATED 20-08-2020 IN BAIL APPL.5142/2020 ON HIGH COURT
ANNEXURE 7	ORDER DATED 05-05-2020 IN BAIL APPL.2596/2020 ON HIGH COURT