



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 6TH DAY OF FEBRUARY 2024 / 17TH MAGHA, 1945

BAIL APPL. NO. 11291 OF 2023

CRIME NO.1234/2019 OF AMBALAMEDU POLICE STATION, ERNAKULAM

AGAINST THE ORDER/JUDGMENT SC 350/2023 OF ADDITIONAL

DISTRICT & SESSIONS COURT, MUVATTUPUZHA

PETITIONER/ACCUSED:

SANJAY ORAON,
AGED 26 YEARS
S/O JEMS ORAON, PURAB LINE, ATTIABARI TEA GARDEN,
ATTIABARI PS LIMIT, KALCHINI, WEST BENGAL, PIN -
735217

BY ADV N.B.FATHIMA SULFATH

RESPONDENT/STATE:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031
- 2 THE DIRECTOR
OF THE FORENSIC LABORATORY , THIRUVANANTHAPURAM IS
SUO MOTU IMPEADED AS THE ADDITIONAL 2ND
RESPONDENT AS PER ORDER DATED 23-1-24

BY ADVS.
PUBLIC PROSECUTOR
ADDL.DIRECTOR GENERAL OF PROSECUTION
ADDL. STATE PUBLIC PROSECUTOR

OTHER PRESENT:

ADGP SRI GRASHIOUS KURIAKOSE

SR PUBLIC PROSECUTOR SRI. C K SURESH

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
06.02.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



“CR”

C.S.DIAS,J.

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B.A No.11291 of 2023

Dated this the 6th day of February, 2024

ORDER

The petitioner, who is the accused in Crime No.1234/2019 of the Ambalamedu Police Station, Ernakulam, registered against him for allegedly committing the offence under Section 302 of the Indian Penal Code, has filed the application under Section 439 of the Code of Criminal Procedure (in short, ‘Code’). He is in judicial custody since 23.10.2019.

2. The summary of the prosecution case is that, on 21.10.2019 at around 10.40 p.m., the accused, who hails from the State of West Bengal, fatally stabbed Ajay Uravo (deceased), a fellow native at house No.XIV/304 A in Kunnathunadu Grama Panchayat and, thus,



committed the offence of murder.

3. Heard; Smt. Fathima Sulfath B., the learned counsel appearing for the petitioner and Sri. Suresh C.K., the learned Senior Public Prosecutor.

4. The learned counsel for the petitioner emphatically argued that the petitioner is innocent of the accusation levelled against him. There is no material to substantiate that he has committed the crime. The petitioner is a daily labourer and the sole breadwinner of his family. The petitioner hails from a financially backward family. He has been in judicial custody since 23.10.2019, which is now four years and three months. Yet, the trial has not commenced. The reason for the inordinate delay in commencing the trial is unknown to the petitioner. Therefore, the petitioner may be enlarged on bail.

5. Conversely, the learned Public Prosecutor strenuously opposed the application. He argued that the



petitioner has committed the brutal murder of a person from his native place. The petitioner is from the State of West Bengal and has no roots in Kerala. If the petitioner is enlarged on bail, he is likely to flee from justice. He relied on the decision of the Honourable Supreme Court in **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Another**, [(2004) 7 SCC 528] and contended that the mere fact that the accused has undergone a certain period of incarceration or that the trial is not likely to be concluded shortly by itself would not entitle the accused to be enlarged on bail. He, therefore, prayed that the application be dismissed.

6. When the bail application came up for consideration on 10.1.2024, this Court had called for a report from the learned Additional Sessions Judge, Muvattupuzha, to ascertain the status and estimated time period required to dispose of S.C. No. 350/2020.

7. Pursuant to the above direction, the learned



Sessions Judge reported that, even though the case was committed to the said court, the report and properties were not received from the Forensic Science Laboratory ('FSL', for brevity). Therefore, the charge has not been framed. As the prosecution has cited 39 witnesses, he would require at least six months' time to dispose of the case, that too after receipt of the report and properties from the FSL.

8. Based on the above report, this Court directed the Investigating Officer to file an affidavit clarifying why the report and properties from the FSL were not submitted before the court below.

9. Accordingly, the Investigating Officer filed an affidavit stating that the final report was filed on 1.3.2020 before the Judicial First-Class Magistrate, Chottanikkara, and the ten material objects were forwarded to the FSL, Thiruvananthapuram on 28.10.2019. Although the case was committed to the court below and numbered S.C.



No.350/2020, the charge has not been framed for the want of the scientific report on the material objects. The earlier Investigating Officer had sent a reminder to the Director of the FSL on 1.2.2023 to expedite the analysis. He asserted there were no laches on his part.

10. Considering the above report, this Court suo-motu impleaded the Director of the FSL as an additional respondent and directed him to file an affidavit explaining the reason for the inordinate delay in submitting the report on the material objects which were reportedly sent to him on 28.10. 2019, viz., more than four years and two months back.

11. In response to the above order, the Director has filed an affidavit, inter-alia, stating that the material objects were received on 5.11.2019 in ten packets. He also received a reminder from the Judicial First-Class Magistrate, Chottanikkara, on 9.8.2021, requesting an urgent report. However, the analysis got delayed due to



the high volume of requisitions received for getting reports on material objects in 3549 cases under the POCSO Act and from several Fast Track and other Courts. Due to the staff shortage, the laboratory was not in a position to urgently conduct the scientific analysis of the material objects. Nevertheless, the examination of the material objects in case on hand are completed in the serology and DNA divisions and are ready for dispatch. The Investigating Officer has been informed to collect the material objects and copies of the reports, which he has agreed to collect on 29.1.2024. The report and remnants of the material objects have been forwarded to the jurisdictional Magistrate on 30.1.2024. There is no willful disobedience on the part of the laboratory. Hence, the explanation may be accepted.

12. Section 293 of the Code deals with reports of Government Scientific experts which can be used as evidence in an inquiry, trial or other proceedings under



the Code.

13. To streamline the procedure to be followed by scientific experts in giving their opinion on the examination and analysis of matters referred to them under Section 293 of the Code, the Government of Kerala has promulgated the Department Manual on Chemical Examiners Laboratory Department, which has come into effect from 30.01.2015.

14. According to Chapter IX of the Manual, chemical analysis reports are admissible in evidence under Section 293 of the Code. Similarly, Chapter X mandates that priority has to be given in cases where reminders are received from the Court, Investigation Officer, Medical Officer, etc.

15. The materials on record reveal that the alleged murder took place on 21.10.2019, that the petitioner was arrested and remanded to judicial custody on 23.10.2019, that the ten material objects were forwarded to the FSL,



Thiruvananthapuram on 28.10.2019, that the jurisdictional Magistrate had sent a reminder on 9.8.2021 and that the former Investigating Officer had sent a reminder to the Director of the FSL on 1.2.2023 for urgent analysis. Yet, the analysis was at a standstill for four years.

16. This Court speaking through Raja Vijayaraghavan V., J., in **Aneeshkutty V. State of Kerala and Ors.** [2022 SCC Online 1804], has succinctly spelt out the importance of forensic science in criminal cases in the following lines:

“16. Forensic Science is an indispensable branch of jurisprudence and is considered one of the most deadly weapons in the armoury of the investigator. We cannot shut our eyes to the ways in which Forensic science is used for the detection of crime in other developed countries. As we have not invested our time and effort in establishing cutting edge labs and in employing skilled scientific officers to aid in all phases of the criminal investigation process, the acquittal rate is alarmingly high. The common refrain that we hear in Court is that Labs are working far beyond their capacity and thousands of samples forwarded much earlier are yet to be tested. It is common knowledge that thousands of samples are lying in labs and it would take years to analyse the same. The pendency in the labs is mind boggling. The less said the better. Obviously, a State like Kerala where the crime rate is high requires enough labs with highly skilled Scientific Officers and state-of-the-art equipment. The report from the



FSL and the Chemical Examiners Lab form the backbone of the prosecution case. **Testing of samples must be swift, efficient and accurate and the report has to reach the Courts as expeditiously as possible. It has to be ensured that a sample forwarded to the Lab is analysed and a report forwarded to the Court within an outer limit of three weeks at the most. If reports are delayed as has happened in this case, the only conclusion that can be arrived at is that the system has collapsed and needs resuscitation”.**

(emphasis given)

17. The situation in the case on hand is worse than that of the case in Aneeshkutty’s case. The trial has not commenced on account of the delay on the part of the FSL in submitting the report. The FSL in turn says that there are several requests for urgent reports and there is a dearth of staff.

18. The Manual or other laws make no distinction among the accused, whether under the POSCO Act or the IPC, their ethnicity, financial status or origin. An accused is an accused, irrespective of the offence or their background.

19. We have moved into the 75th year of independence. It is common knowledge that Investigation



Agencies now heavily depend on scientific evidence and technology for the investigation of crimes. In these times, we cannot put our hands in the air and cry about the dearth of staff and lack of infrastructure. With the alarming and exponential increase in crimes in recent years, it is high time that we ensure that facilities for the dispensation of justice are put in place, especially when the entitlement of the accused to a speedy trial has been emphasised by the Honourable Supreme in **Hussainara Khatoon (I) v. Home Secy., State of Bihar** [(1980) 1 SCC 81] to be implicit in the spectrum of Article 21 of the Constitution of India. If the scientific analysis is inordinately delayed, like in the present case, the accused may take it as a valuable defence, and the same will be detrimental to the larger public interest.

20. In this context, it is worth recollecting the words of P.N. Bhagwati.,J. (as he then was) in **Hussainara Khatoon (supra):**

“2. The information contained in these



newspaper cuttings is most distressing and it is sufficient to stir the conscience and disturb the equanimity of any socially motivated lawyer or judge. Some of the undertrial prisoners whose names are given in the newspaper cuttings have been in jail for as many as 5, 7 or 9 years and a few of them, even more than 10 years, without their trial having begun. What faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keeps them behind bars, not because they are guilty, but because they are too poor to afford bail and the courts have no time to try them. It is a travesty of justice that many poor accused, "little Indians, are forced into long cellular servitude for little offences" because the bail procedure is beyond their meagre means and trials don't commence and even if they do, they never conclude....."

21. In **P. Ramachandra Rao v. State of Karnataka**, (2002) 4 SCC 578, the Honourable Supreme Court has held that it is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21, 19, and 14 and the Preamble of the Constitution as also from the Directive Principles of State Policy. It is also observed that the goal of speedy justice can be achieved by a combined and research-oriented collective thinking an action on the part of the legislature, the Judiciary, the Executive, and representative bodies of



the members of the Bar.

22. It is also contextual to reminiscence the words of P. N Bhagawati., J. in **Kadra Pehadiya and Others v. State of Bihar** [(1981) 3 SCC 671]: “ How can a civilised society tolerate a legal and judicial system, which keeps a person in jail for three years without commencing his trial, but the atrocity does not end here; more is yet to come.”

23. The law has thus crystalised that the right of a speedy and fair trial to an accused is an integral part of Article 21 of the Constitution of India. It is the constitutional duty of all the organs of the State to ensure speedy justice.

24. In the above conspectus, the explanation put forth by the Director of the FSL, that the inordinate delay of four years was due to the massive influx of cases under the POSCO Act and the lack of staff, is not appealing to this Court as it does not align with the mandate of the doctrine of speedy and fair trial proclaimed by the



Honourable Supreme Court.

25. It is true that the petitioner has been in judicial custody since 23.10.2019. But undoubtedly, he hails from the State of West Bengal. I find sufficient force and significance in the submission of the learned Public Prosecutor that there is the likelihood of flight risk if the petitioner is released, particularly since he has no roots in the State of Kerala.

26. Again, in **Hussainara Khatoon (supra)**, the Honourable Supreme Court has observed as follows:

“4. If the Court is satisfied, after taking into account, on the basis of information placed before it, that the accused has his roots in the community and is not likely to abscond, it can safely release the accused on his personal bond. To determine whether the accused has his roots in the community which would deter him from fleeing, the Court should take into account the following factors concerning the accused:

- “1. The length of his residence in the community,
2. his employment status, history and his financial condition,
3. his family ties and relationships,
4. his reputation, character and monetary condition,
5. his prior criminal record including any record of prior release on recognizance or on bail,
6. the identity of responsible members of the community who would vouch for his reliability,
7. the nature of the offence charged and the apparent probability of



conviction and the likely sentence insofar as these factors are relevant to the risk of non-appearance, and

8. any other factors indicating the ties of the accused to the community or bearing on the risk of wilful failure to appear..... ..”

27. Likewise, in **Kalyan Chandra Sarkar (supra)**, it is enunciated that the mere fact that the accused had undergone a certain period of incarceration or that the trial has not concluded by itself are not grounds to enlarge the accused on bail.

28. After considering the factors such as the nature, gravity and seriousness of the accusation levelled against the petitioner, the potential severity of the punishment that is likely to be inflicted on him, that he has no roots in the State of Kerala and the anticipated risk of him fleeing from justice, I am not inclined to order his release on bail, but in the peculiar facts and circumstances of the case especially since the FSL report has now been submitted before the court below, I am inclined to direct the learned Sessions Judge to expedite the trial in S.C.No350/2020 in precedence to other pending matters, which will do



complete justice to both sides.

In the result:

- i The bail application is dismissed;
- ii The Court of the Additional Sessions Judge, Muvattupuzha, is ordered to consider and dispose of S.C.No.350/2020, in accordance with law and as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a certified copy of the order.
- iii The additional second respondent/Director of the FSL is directed to prioritise the analysis and reporting of material objects submitted for scientific reports, in precedence to other matters, if a requisition is received from the Courts and/or the Investigating Officer as provided under Chapter X of the Manual.
- iv The Registry is directed to forward a copy of this order to the Additional Chief Secretary, Home



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Department, Government of Kerala, for information and necessary action and to the Court of the Additional Sessions Judge, Muvattupuza, for compliance.

Sd/-

C.S.DIAS, JUDGE

rmm6/2/2024



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APPENDIX OF BAIL APPL. 11291/2023

PETITIONER ANNEXURES

Annexure A1

THE TRUE COPY OF THE ORDER IN CRL.M.P.
NO. 364 OF 2023 IN S.C. NO. 350/2023 IN
ADDITIONAL SESSIONS COURT MUVATTUPUZHA
DATED ON 04.12.2023