

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 15TH DAY OF OCTOBER 2020 / 23RD ASWINA, 1942

Bail Appl..No.5390 OF 2020

CRIME NO.332/2019 OF Kodenchery Police Station , Kozhikode

PETITIONER:

JOLLYAMMA JOSEPH,
AGED 47 YEARS,
PONNAMATTAM VEEDU, KODATHAI BAZAR,
KODATHAI VILLAGE, THAMARASSERY,
KOZHIKODE, PIN-673573

BY ADVS.
SHRI.BIJU ANTONY ALOOR
SHRI.JOBIN ABRAHAM
SRI.K.P.PRASANTH
SHRI.SHAFIN AHAMMED
SHRI.HIJAS T.T.
SRI.SURYA RAJ N.S.

RESPONDENT:

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

SRI.SUMAN CHAKRAVARTY FOR DGP

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 30-09-2020, THE COURT ON 15-10-2020 PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.5390 of 2020

Dated this the 15th day of October, 2020

O R D E R

The petitioner is the accused in Crime No.332/2019 of Kodencherry Police Station, Kozhikode. The above case is registered against the petitioner, alleging offence punishable under Section 302 IPC. The petitioner is involved in five other murder cases. The allegation in all the cases is that she murdered one or other of her close relatives. I considered the bail application of the petitioner in Crime No.335/2019 earlier and, after considering all the contentions of the petitioner in that particular case, dismissed the same (Jollyamma Joseph v. State of Kerala (2020(5) KLT 75). Similarly, the bail application filed by the petitioner in Crime No.189/2011 of Kodancherry Police Station and Crime No.980/2019 of Kodencherry Police Station were also dismissed by two other learned Judges of this Court. Therefore, even if the petitioner is released on bail in this case, she cannot come out of jail.

2. But simply because this court dismissed the petitioner's bail applications in three other cases, this court cannot dismiss this bail application without considering her contentions in this case. Each case has to be considered based on its merit. Similarly, this court cannot import the evidence supplied by the police in some other cases while considering the bail application in this case. This court can only bear in mind that there are criminal antecedents against the petitioner.

3. The petitioner is a native of Kattappana, Idukki District. According to the prosecution, she fell in love with Roy Thomas and married him in 1997. There are two children in the marital relationship, namely Remo Roy and Renold Roy. All of them were living at Ponnammattam, the family house. Tom Thomas and Annamma Thomas are the father-in-law and mother-in-law of the petitioner. Their family consists of three children, namely Roy Thomas, Rejo Thomas, and Renji Wilson. Rejo Thomas and Renji Wilson are well educated. The petitioner has an only pre-degree qualification. But the petitioner tries to believe all the family members that she had passed B.Com and M.Com. It is the prosecution case that she forged photostat copy of certificates as her certificates and

showed the family members to get them believed about her qualifications. Believing the petitioner's words that she is qualified, the mother-in-law Annamma Thomas had insisted the petitioner to carry on the study to attain some job. To evade from the regular reminding from Annamma Thomas, the petitioner had gone to her native place at Kattappana, stating that she is attending B.Ed Course. Later, the petitioner intimated the relatives that she had completed B.Ed course. After the retirement of Annamma Thomas from her service, the petitioner was compelled by the mother-in-law to get some job. It has irritated the petitioner, and she left home, stating that she got a Guest Lecturer post in St.Thomas College, Pala. After that, she will come to the family and meet her kids only on weekends. Then the petitioner realised that Annamma Thomas might get some information regarding her real life. Therefore, it is the prosecution case that the petitioner decided to end the life of Annamma Thomas.

4. According to the prosecution, the petitioner acquired a prescription for the poisonous 'DOG KILL' from Government Veterinary Hospital at Kozhikode in the name of 'Jolly Devagiri' and purchased the poison from the dealer named 'DYNAVET' at Kozhikode. Thereafter the petitioner mixed the

poison in the soup, and Annamma Thomas consumed it on 22.8.2002 morning, and she died. According to the prosecution, the petitioner murdered Annamma Thomas by poisoning. This is the crux of the prosecution case.

5. Heard the learned counsel for the petitioner, Advocate B.A Aloor and the Public Prosecutor Sri.Suman Chakravarthy.

6. The learned counsel for the petitioner submitted that even if the entire allegations against the petitioner are accepted in toto, no offence under Section 302 IPC is prima facie made out in this case against her. The counsel submitted that the prosecution is relying upon some extra judicial confessions alleged to be given by the petitioner. The counsel submitted that even if that is accepted in toto, the same will not connect the petitioner to the offence under Section 302 IPC. The counsel also submitted that the petitioner's alleged confession statement was given after about 17 years of the alleged murder of Annamma Thomas. The counsel submitted that extra judicial confession is a weak piece of evidence. Therefore, a court of law cannot convict the accused based on an extra judicial confession of the accused. The counsel also submitted that the other evidence produced by the prosecution is that one Jolly Davagiri purchased 'DOG

KILL' based on a prescription obtained from Government Veterinary Hospital at Kozhikode on 27.6.2002. Thereafter, it is alleged by the prosecution that the petitioner obtained DOG Kill from a distributor. The counsel submitted that either the doctors of the Veterinary Hospital or other staff members of the said hospital did not identify the petitioner. The alleged supplier also was not able to identify the petitioner. Therefore, the counsel submitted that simply because a 'DOG KILL' is purchased by one Jolly Devagiri based on a prescription dated 27.6.2002 from Government Veterinary Hospital, the same is not a piece of evidence to connect the petitioner to the alleged murder of Annamma Thomas. The counsel submitted that simply because there are some other cases pending against the petitioner, this court may not dismiss this bail application. The counsel relied the judgments reported as **Datharam Singh v. State of U.P & Others (2018(1) KHC 901)**, **Rajkumar Chaurasiya v. State of Maharastra (2020 ALL MR(Cri) 2977)**, **Sanjay Chandra v. CBI (AIR 2012 SC 830)**, **Thundiyil Muhammadali & Prasun.S v. State of Kerala (2020(4) KLT 257)** and **Rajinder Kumar v. State of Himachal Pradesh (2018 CrI.LJ (NOC) 589)**. The counsel submitted that the petitioner is ready to abide any condition, if

this court is granting her bail.

7. The Public Prosecutor opposed the bail application. This bail application was heard in part on 15.9.2020. On that date, this court passed the following order:

“P.P will file a statement showing the circumstances which they rely against the petitioner in the final report on or before 23.9.2020. A copy of the same should be supplied to the counsel for the petitioner. Post this bail application on 25.9.2020 at 1.45 pm.

Copy of the order to be handed over to both parties.”

8. As directed by this court a report is filed by the investigating officer in this case. In the report it is submitted by the investigating officer that the following are the main circumstances relied by the prosecution.

i) The petitioner had voluntarily confessed about her involvement in the case to her elder son Remo Roy and some other relatives. Their statement under Section 164 Cr.P.C is also recorded later.

ii) The petitioner acquired a prescription for the poisonous DOG KILL from the Government Veterinary Hospital, Kozhikode, in the name of Jolly Devagiri and purchased the poison from the

dealer namely DYNAVET. According to the investigating officer, the statement of the doctor of Veterinary Hospital is a piece of evidence coupled with the register maintained in the hospital, which contains the name of the petitioner.

iii) The petitioner has given extra judicial confession to eight persons regarding the homicides and these eight persons had given their statement under Section 164 Cr.P.C. Among these eight persons, four of them stated that she has made extra judicial confession about the homicide of Annamma Thomas.

iv) The incident of homicide of Annamma Thomas has to be read along with the other homicide made by the petitioner using Cyanide. The prosecution case is that the petitioner murdered her father-in-law Tom Thomas in 2008, Roy Thomas, her husband in 2011, M.M.Mathew, her close relative in 2014, Alfain Shaju and Silly Shaju in 2014 and 2016 respectively. Hence, the investigating officer says that all these incidents

of homicides has to be read as a whole and could not be separated. The investigating officer says that there is no recovery under Section 27 of the Evidence Act in this case. But Cyanide has been recovered under Section 27 of the Indian Evidence Act in other crimes.

v) About 20 prime witnesses in this case are the petitioner's close relatives including two children. There is every likelihood of influencing these witnesses, if the petitioner is released on bail.

vi) The petitioner has a history of attempting to commit suicide while she was undergoing remand for which a case was registered by the Kasaba Police as Crime No.169/2020 under Section 309 IPC. Therefore, if she is released on bail, there is every possibility for an attempt to commit suicide by her because her entire image in society is damaged after those six murders are made known to the public.

9. The Public Prosecutor relied the judgment of the

Apex Court in **Kalyan Chandra Sarkar v. Rajesh Rajan [(2004)(7) SCC 528]** and contended that incarceration already undergone by the accused and the unlikelyhood of trial concluding in the near future is not a ground to enlarge the accused on bail. The Public Prosecutor also submitted that the principle laid down by the Apex Court in cases where gravity of the offences are severe and the possibility of the witnesses being influenced and the evidence being tampered with is also to be considered. The Public Prosecutor relied the judgment of the Apex Court in **State of U.P v. Amarmani Tripathi [(2005) 8 SCC 21]**, **Rajesh Ranjan Yadav alias Pappu Yadav v. CBI through its Director [(2007) 1 SCC 70]** and **Gobarbhai Naranbhai Singala v. State of Gujarat [(2008) 3 SCC 755]**. The Public Prosecutor also relied the judgment in **Prasad alias Chandu Babu v. State of Bihar [(2016) 9 SCC 443]**. The Public Prosecutor submitted that the petitioner's argument is based on the evidence formulated by the prosecution. Such evidence formulated by the prosecution cannot be considered by this court while considering a bail application. The Public Prosecutor relied the judgment of the Apex Court in **State of Bihar v. Rajballav Prasad (2017 (2) SCC 178)** and **Gajanand**

Agarwal v. State of Orissa and others (2007(14) SCC 537) and Kanwar Singh Meena v. State of Rajasthan (2012(12) SCC 180).

10. The judgments of the Apex Court relied by the petitioner and Public Prosecutor are all relates to the fundamental principles in connection with the consideration of bail applications. I need not reiterate all those decisions because all of them are settled positions. After scanning all the earlier judgments, the Apex Court in **P.Chidambaram v. Central Bureau of Investigation (AIR 2019 SC 5272)** framed certain factors to be taken into consideration while considering a bail application. The same is extracted hereunder:

“(i) The nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) Reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) Reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) Character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) Larger interest of the public or the State and similar other considerations.” (*emphasis*

supplied)

11. Therefore, the first and foremost thing to be considered while considering a bail application is the nature of accusation and severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution. Therefore, the Apex Court observed that it is the duty of the bail court to consider the nature of the materials relied upon by the prosecution while considering a bail application. The consideration of the nature of the materials relied upon by the prosecution in a bail order cannot be used by the trial court while considering the case finally. The consideration of the materials relied upon by the prosecution by the bail court is only a prima facie finding to find out whether the accused can be released on bail or not. Sometimes the very same materials will be vital when the prosecution adduces their entire evidence. Therefore the trial court can't rely on any of the observations made by the bail court while allowing or dismissing a bail application. The trial court should decide the case untrammelled by any observations by the bail court while granting or refusing bail. But as observed by the apex court in Chidambaram's case(supra), the

nature of the materials relied upon by the prosecution is also to be considered by this court while considering this bail application. I am aware of the arguments of the Prosecutor based on the decision of the Apex Court that the evidence formulated by the prosecution cannot be discussed in detail while considering a bail application. Considering the entire facts and circumstances of the case and bearing in mind the principles laid down by the Apex Court, I have to consider this bail application. As stated by the Apex Court in **Chidambaram**'s case, the nature of the materials relied upon by the prosecution should be considered, at least for prima facie satisfaction that whether the petitioner is entitled to bail or not.

12. The main material relied by the prosecution in this case is extra judicial confession of the accused to some of the witnesses in this case. The Public Prosecutor made available the statement recorded by the investigating officer under Section 161 Cr.P.C and the statement recorded by the learned Magistrate under Section 164 Cr.P.C of these witnesses. I perused those statements. I do not want to make any observations about the admissibility of those statements. But it is a fact that the statements were given by the witnesses in

2019. It is true that the deceased gave confession to some of these witnesses in 2019 that she is responsible for the death of Annamma Thomas. Annamma Thomas consumed poison on 22.8.2002, and she died consequently, is the prosecution case. According to the prosecution, the petitioner mixed poison in the soup with an intention to kill Annamma Thomas. The alleged extra judicial confession in this case is after 17 years of the alleged murder. Whether such a statement is admissible or not, is a matter to be decided by the trial court at the appropriate stage.

13. The admissibility of the extra judicial confession is considered by the Apex Court in several decisions. In **Makhan Singh v. State of Punjab (AIR 1988 SC 1705)**, the Apex Court held like this:

“11. On 10 August, 1985 F.I.R. was lodged by Nihal Singh (PW-2)¹ and on 13.8.85 the appellant went to Amrik Singh (PW-3) to make an extra judicial confession. Amrik Singh says that the appellant told him that as the police was after him he had come and confessed the fact so that he might not be unnecessarily harrassed. There is nothing to indicate that this Amrik Singh was a person having some influence with the police or a person of some status to protect the appellant from harrassment. In his cross-examination he admits that he is neither the Lumbardar or Sarpanch nor a person who is frequently visiting the Police Station. He further admits that when he produced the appellant there was a crowd of 10 to 12 persons. There is no other corroborative evidence about the extra judicial confession. As rightly conceded by the learned counsel for the State that extra judicial

confession is a very weak piece of evidence and is hardly of any consequence."

(emphasis supplied)

14. Similarly, the Apex Court in **State of Punjab v. Gurdeep Singh [(1999) 7 SCC 714]** observed like this about the admissibility of the extra judicial confession.

"3. Confession in common acceptation means and implies acknowledgment of guilt - its evidentiary value and its acceptability however shall have to be assessed by the court having due regard to the credibility of the witnesses. In the event however, the court is otherwise in a position having due regard to the attending circumstances believes the witness before whom the confession is made and is otherwise satisfied that the confession is in fact voluntary and without there being any doubt in regard thereto, an order of conviction can be founded on such evidence.

17. There is no denial of the fact that extra judicial confession is admissible in evidence and the court in appropriate cases can rely thereon to the extent of even basing conviction of the accused. In a long catena of decisions of this court, the settled position of the present day is that the extra judicial confession by itself if, otherwise in conformity with the law, can be treated as substantive evidence, and in appropriate cases it can be used to punish an offender. We, however, hasten to add here that this statement of law stands qualified to the extent that the court should insist on some assuring material or circumstance to treat the same as piece of substantive evidence.

26. The confession in the normal course of events are made to avoid harassment by the police and to a person who could otherwise protect the accused against such a harassment. The records in the present appeal do not reflect any one of these aspects. As such it is difficult to point to the accused with the crime on the basis of the evidence available in this case. The incident did take place on 18th November, 1989 and the body was recovered on 19th November. The extra-judicial confession of the accused as regards his involvement in the crime is said to have been effected to Jaspal Singh PW 7 on December 7, 1989 - thus a

delay of more than 20 days without any explanation whatsoever. The delay in recording extra-judicial confession before a person wholly unconnected with the police is always a matter of great suspect. In our view the High Court was right in rejecting the confessional statement." (Emphasis supplied)

15. A Division Bench of this Court also considered the admissibility of the extra judicial confession in **Gopi v. State of Kerala (1991(2) KLT 838)**

16. In the light of the above principle, the admissibility of the extra judicial confession alleged to be given by the petitioner after about 17 years of the alleged incident is to be decided by the trial court at the appropriate stage. But while considering the bail application of the accused, I am not in a position to accept these extra judicial confessions as a material to substantiate the case of the prosecution. I once again make it clear that I made this observation only for the purpose of disposing of this bail application. The trial court should consider the case untrammelled by this observation.

17. The other material relied on by the prosecution is that the petitioner acquired DOG KILL from Government Veterinary Hospital at Kozhikode in the name of Jolly Devagiri. Admittedly, the doctors or other staff of the hospital were not able to identify the petitioner. It is true that the prosecution

seized the register from the hospital which shows that the prescription is issued to one Jolly Devagiri on 27.6.2002. How these materials will connect with the accused, is a matter to be decided by the trial court at the appropriate stage. But while considering a bail application, I think this is also not a material which can be accepted at this stage, especially when the witnesses were not able to identify the petitioner.

18. The investigating officer says that the incident of homicide of Annamma Thomas has to be read along with other homicides made by the petitioner using Cyanide. Since Cyanide is seized based on a statement of the accused under Section 27 of the Evidence Act in the other case, the prosecution relies that also as a relevant factor in this case. Again, I do not want to make any observations about the same. This is also a matter to be considered by the trial court. Whether Section 27 of the Evidence Act recovery evidence of an accused in one case can be relied in another case is a question of law and these are matters to be considered by the trial court at the appropriate stage. Ofcourse the conduct of the accused may also be relevant while considering the case by the trial court at the appropriate stage. But I don't think that this is a material that can be safely relied by this court

while considering a bail application.

19. The other two grounds relied by the investigating officer is that the 20 prime witnesses, in this case, are close relatives of the petitioner and if the petitioner is released on bail there is every likelihood of influencing those witnesses by the petitioner. The Public Prosecutor also submitted that the petitioner has a history of attempting to commit suicide and if she is released on bail, she will try to commit suicide. These two points need not be considered at this stage. The petitioner will not be released from jail, even if I allow this bail application because this court rejected the bail application of the petitioner in Crime No.335/2019 in B.A.No.4628/2020 (Jollyamma Joseph v. State of Kerala (2020(5) KLT 75). Therefore, there is no question of releasing the petitioner from jail at this stage unless she obtained bail from this court or from the Apex Court in other cases.

20. These are the materials relied upon by the prosecution as per the statement of the investigating officer in the report submitted by him on 22.9.2020. I am not in a position to reject this bail application in the light of the facts discussed by me in the earlier paragraphs. Of course whether the materials relied upon by the prosecution are admissible in

evidence, is a matter to be decided at the time of trial. I once again reiterate that the trial court should decide this case untrammelled by any observations in this bail order. But considering the entire facts and circumstances of the case, I think, the petitioner can be released on bail in this case with stringent conditions.

1. Petitioner shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional court.

2. The petitioner shall appear before the jurisdictional court as and when required.

3. The petitioner shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

4. Petitioner shall not leave India without permission of the jurisdictional court.

5. Petitioner shall not commit an offence similar to the offence of which she is accused, or suspected, of the commission of which she is

suspected.

6. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing in the wake of Covid 19 pandemic.

7. If any of the above conditions are violated by the petitioner the jurisdictional court can cancel the bail in accordance to law, even though the bail is granted by this court.

21. Before parting with this case, I have to make certain observations about the general trend if a sensational case is registered. It is fundamental in criminal law that, if an accused in police custody gave a confession to the police that he committed the offence, the same is not admissible in the eye of law. No court of law can accept the same as evidence. The confession is usually recorded by the police for collecting legal evidence. But the investigating officers in sensational cases are leaking the confession statement of the accused and the media is giving wide publicity to the confession statement of the accused, especially in sensational cases. In this case also, while the investigation was going on, the media used to

divulge the details of the investigation every day. If we go through the morning newspaper or watch the news in news channels, we will get the confessions alleged to be given by the accused while in police custody. We will also get the questions that will be asked to an accused in police custody by the investigating officer and even the expected answers from the accused!! I don't know from where the media get these pieces of information. A person who knows the fundamentals of criminal investigation will skip these news because of shame. In the eye of the law, an investigating officer cannot divulge any materials collected during the investigation to the public or media. This Court in **Murukeshan v. State of Kerala (2011(1) KLT 194)** considered this point in detail.

The relevant portion of the judgment is extracted hereunder:

“5. It is a passion for certain investigating officers to disseminate to the media piecemeal or full information regarding the progress of investigation. All concerned should realise that once a case involving the commission of a cognizable offence has been registered and the F.I.R. forwarded to the Magistrate concerned, the matter is *sub judice* and no police officer has the right to leak out information regarding the outcome of investigation until the final report is eventually filed before the court. Cases may attract either justifiable or uncalled for media publicity. There is a tendency among certain sections of the Press to draw sustenance even from unconfirmed sources including the police in order to boost their garbled versions. When police officers freely indulge in passing on information to the media and

to the public, they not only breach the Conduct Rules but also put unnecessary pressure on the Courts which are to eventually try the cases. It is well known that many of the materials collected by the police during investigation are comprised of hearsay or inadmissible stuff and at times extracted from the accused persons themselves by employing third degree methods. Such material will not stand the scrutiny of a court of justice during trial. The Fourth Estate also does not seem to realise the irreparable damage that may be inflicted on the victims of crimes and the alleged culprits and those close to them through sensationalised journalistic adventures. Truth is very often suppressed, exaggerated or distorted in order to add flavour and spice to the story put forward. The fickle minded public which might be conditioned to believe a particular version given through a calculated process of media indoctrination will be loath to accept a different conclusion reached in the Court verdict. It is pertinent to remember that the trial Court can take into consideration only legal evidence. If the court were to finally record an order of acquittal for want of acceptable evidence before it, it may not be out of place if the public at large were to conclude that the Court verdict was wrong. They may even attribute motives in the presiding judge. No disciplined society which believes in the rule of law can afford to have such a state of affairs to come to stay. (Vide paragraph 2G of *State of Kerala v.Aboobacker* (2006 (4) KLT SN 33 (C.No.49) = ILR 2006 (3) Ker.672) and *suo motu contempt proceedings* (2009 (1) KLD 133) (Delhi High Court). Investigating Officers should, therefore, be alive to this aspect of the matter and they along with the media will have to be prepared to face action in the event of a breach."

(Emphasis supplied)

22. This Court observed that "all concerned should realise that once a case involving the commission of a cognizable offence has been registered and the FIR forwarded to the Magistrate concerned, the matter is sub judice and no

police officer has the right to leak out information regarding the outcome of investigation until the final report is eventually filed before the Court". This Court also observed that "investigating officers should, therefore, be alive to this aspect of the matter and they along with the media will have to be prepared to face action in the event of a breach." This court is issuing directions not to violate the same. This court knows how to deal with those violations. I once again reiterate that if the above directions are violated either by the police officers or the media, stringent actions will be taken by this court.

23. As I observed earlier, if there is any violation of the directions of this court, the consequences will be serious. This court cannot sit as a silent spectator in criminal justice delivery system. If the confession statement and other materials collected during investigation are discussed in media and divulged to the general public, the situation will be perilous. The general public may not know that a confession statement given by an accused in police custody is not admissible. A court of law can accept only legal evidence. If a court of law decides a case based on legal evidence, the general public may suspect even the judiciary if the present situation of divulging confession statement and other

materials collected during investigation is leaked like this. A full stop is necessary. My respectful request to the reporters of print and visual media and, of course, to the anchors of twenty four hours news channel is to read section 24 of the Evidence Act and other similar sections before framing headlines in the newspapers and before giving breaking news in NewsChannel based on confession statement of accused who are in police custody. I also request them to read the dictum laid down by this court in Murukeshans case. If there is any violation of the same stringent action will be taken. The investigating officers also should be careful at least in the future. If there is any violation of the above directions by any police officers, disciplinary action should be taken. Therefore, I direct the Registry to send a copy of this order to the Director General of Police.

With these observations, this bail application is allowed.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

ab