



2024:KER:74358

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 7TH DAY OF OCTOBER 2024 / 15TH ASWINA, 1946

BAIL APPL. NO. 6454 OF 2024

CRIME NO.277/2024 OF Pothanikadu Police Station, Ernakulam

AGAINST THE ORDER/JUDGMENT DATED IN Bail Appl. NO.5552 OF
2024 OF HIGH COURT OF KERALA

PETITIONER/S:

ROMI KJ @ ROMY,
S/O JOHN, KODAPPANAMKUNNAL HOUSE, KANIYARKODE PO,
THRISSUR DISTRICT, PIN - 680594

BY ADVS.
P.T.SHEEJISH
A.ABDUL RAHMAN (A-1917)
PARVATHY S. MANOJ
AMRITA SAFAL M.
YOOSUF SAFWAN T. AJMAL

RESPONDENT/S:

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

OTHER PRESENT:

SR PP SMT SEETHA S

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
07.10.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



C.S.DIAS,J

Bail Application No.6454 of 2024

Dated this the 7th day of October, 2024

ORDER

The application is filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, (for short 'BNSS') for an order of pre-arrest bail.

2. The petitioner is the sole accused in Crime No.277/2024 of the Pothanikad Police Station, Ernakulam, which is registered against him for allegedly committing the offences punishable under Sections 498-A and 306 of the Indian Penal Code (in short, 'IPC').

3. The crux of the prosecution case is that: the accused, who was the husband of Alfi (deceased), a 30 year old lady and the mother of four children, had mentally and physically harassed the deceased, and she committed suicide on 31.03.2024. Thus, the accused has committed the above offences.

4. Heard; Sri.P.T.Sheejish, the learned counsel



appearing for the petitioner and Smt.Seetha.S., the learned Public Prosecutor.

5. The learned counsel for the petitioner submitted that the petitioner is innocent of the accusations levelled against him. There is no material to substantiate the petitioner's culpability in the crime. The Investigating Officer has without any foundation or basis alleged that the petitioner has committed the offences under Sections 498A and 306 of IPC. The petitioner and his wife were leading a happy married life. They have four children in their wedlock, that is, two daughters and two sons. There were no major problems in their marriage, other than minor skirmishes. On 30.03.2024, the petitioner, the deceased and their younger child went to the petitioner's uncle's house to visit him, after he was discharged from hospital. They spent time together at the said place. Shockingly, after they returned to their home, the deceased hung herself with her shawl. The petitioner rushed his wife to the hospital, but she was declared brought dead. The uncle as well as other witnesses have not stated that



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the petitioner had mentally and physically harassed the deceased or abetted to commit suicide. The petitioner's wife had taken the impulsive decision and committed suicide. The post-mortem report and all the other materials clearly reveal that the deceased died due to suicide. There is no material to attract the offences under Sections 498A and 306 of the IPC. The petitioner is a law abiding citizen without any criminal antecedents. Moreover, the petitioner is taking care of his four children after the death of his wife. The petitioner is willing to abide by any stringent condition that may be imposed by this Court and is willing to co-operate with the investigation. The petitioner's custodial interrogation is not necessary. Hence, the application may be allowed.

6. The learned Public Prosecutor opposed the application. The Investigating Officer has filed a bail objection report, inter alia, contending that there are materials to substantiate the petitioner's involvement in the crime. In fact, the deceased took the extreme step due to the petitioner's alcoholic traits. On the previous night



also, the petitioner and uncle got drunk, which upset the deceased. The petitioner's custodial interrogation is necessary for the proper investigation of the crime. If the petitioner is granted an order of pre-arrest bail, he may influence the witnesses and tamper with the evidence. Hence, the application may be dismissed.

7. The prosecution case is that, the petitioner had mentally and physically harassed the deceased and abetted her to commit suicide.

8. On a careful analysis of the materials on record, it is evident that the petitioner and the deceased were married on 04.07.2010. They have four children in their wedlock. The deceased had not complained about any mental or physical harassment prior to her death. Even on the previous day before the incident, the petitioner, the deceased and their younger child went to visit the uncle of the petitioner, who was discharged from hospital. They spent the night together. It seems that it was due to the reason that the petitioner and uncle had consumed alcohol that night, the deceased turned upset and then took the



extreme step of taking away her life.

9. The predicate offence alleged against the petitioner is under Sec.306 of the IPC, which reads thus:

“306.Abetment of suicide. — If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

10. In ***Chitresh Kumar Chopra vs State (Govt. of NCT of Delhi) [(2009) 16 SCC 605]***, the Hon’ble Supreme Court while dealing with the aspect of abetment has observed that, to attract abetment, there should be an intention to provoke, incite or encourage doing of an act by the latter. Each person’s suicidable pattern is different from others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straight jacket formula in dealing with such cases. Each case has to be decided on its own facts and circumstances.

11. As already discussed, prima facie there is no material to establish that right from the days of marriage the petitioner had mentally and physically harassed the deceased. They were married for the last fourteen years and they have four children in their marriage. Only the



previous day of the incident, the deceased turned anxious and took the extreme step. However, that is a matter to be investigated and ultimately decided at the time of trial.

12. The parameters to grant an order of pre-arrest bail have been succinctly laid down by the Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre v. State of Maharashtra [(2011) 1 SCC 694]*** in the following lines:

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail: (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made; (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence; (iii) The possibility of the applicant to flee from justice; (iv) The possibility of the accused's likelihood to repeat similar or other offences; (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people; (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because



overimplication in the cases is a matter of common knowledge and concern; (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused; (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

13. Similarly in ***Bhadres Bipinbhai Sheth vs State of Gujarat and another*** [2016 (1) SCC 152], the Hon’ble Supreme Court has laid down the principles to be borne in mind, while granting an order of pre-arrest bail. It is observed that courts should carefully examine the complaint made against the accused at the stage of considering a bail application, especially to find out if it is a false or frivolous complaint. The courts also have to examine whether there is any family dispute between the parties and whether the Investigating Officer is acting in connivance with the complainant. The gravity of each



charge and the exact role of the accused should also be properly comprehended. The discretion to grant an order of pre-arrest bail must be exercised on the basis of the available materials and the facts of the particular case and there is no requirement that the accused must make out a special case to exercise to grant anticipatory bail. The discretion of the Court should be exercised with due care and circumspection. Similarly, the frivolity in the prosecution has to be examined, particularly whether the accused would be unjustifiably harassed, humiliated or detained.

14. After bestowing my anxious consideration to the facts, the rival submissions made across the Bar and the law laid down by the Hon'ble Supreme Court in the afore cited decisions and on prima facie finding that there is no specific material to substantiate that the petitioner had mentally and physically harassed the deceased and has abetted her to commit suicide, I am satisfied that the petitioner has made out convincing grounds to invoke the discretionary jurisdiction of this Court under Section 482



of the BNSS. Hence, I hold that the petitioner is entitled to an order of pre-arrest bail, but subject to the condition that he co-operates with the Investigating Officer.

In the result, the application is allowed subject to the following conditions:

- (i) The petitioner is directed to surrender before the Investigating Officer within two weeks from today;
- (ii) In the event of the petitioner's arrest, the Investigating Officer shall release the petitioner on bail on him executing a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like amount each;
- (iii) The petitioner shall appear before the Investigating Officer for two days between 9 a.m. and 5 p.m. within one week from the date of his surrender. He shall also appear before the Investigating Officer as and when directed.
- (iv) The petitioner shall not directly or indirectly make any inducement or threat to the defacto complainant or procure to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any



Police Officer or tamper with the evidence in any manner, whatsoever;

- (v) The petitioner shall not get involved in any other offence while on bail;
- (vi) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law;
- (vii) Applications for deletion/modification of the bail conditions shall also be filed before the court below;
- (viii) Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in ***Sushila Aggarwal v. State (NCT of Delhi) and another [2020 (1) KHC 663]***;
- (ix) The observations made in this order are only for the purpose of considering the application and the



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same shall not be construed as an expression on the merits of the case which shall be decided by the competent court.

Sd/-

rkc/07.10.2024

C.S.DIAS, JUDGE



APPENDIX OF BAIL APPL. 6454/2024

PETITIONER ANNEXURES

Annexure A2 ORDER DATED 29-07-2024 IN BAIL
APPL.5552/2024 ON HIGH COURT

Annexure A1 TRUE COPY OF THE FIR NO: 000277/2024 OF
POTHANIKAD POLICE STATION, ERNAKULAM
DISTRICT