IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 13TH DAY OF AUGUST 2019 / 22ND SRAVANA, 1941

Crl.MC.No.5608 OF 2019(A)

AGAINST THE ORDER IN CMP NO.2958/2019 OF JUDICIAL MAGISTRATE OF FIRST CLASS-III,TRIVANDRUM

CRIME NO.1656/2019 OF MUSEUM POLICE STATION, THIRUVANANTHAPURAM

PETITIONER:

STATE OF KERALA,
REPRESENTED BY THE ASSISTANT COMMISSIONER OF POLICE,
NARCOTIC CELL, THIRUVANANTHAPURAM.

BY ADV. SRI.K.V.SOHAN, STATE ATTORNEY

RESPONDENT:

SREERAM VENKITTARAMAN,
AGED 32 YEARS,
S/O. VENKITTARAMAN, KRISHNALAYAM VEEDU,
HOUSE NO.1031, 28TH WARD, ERNAKULAM VILLAGE,
KANAYANOOR TALUK, ERNAKULAM DISTRICT, PIN - 682011.

BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY
SRI.D.FEROZE
SRI.K.ANAND (A-1921)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13.08.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

O R D E R

The State has filed this Petition under Section 482 of the Code of Criminal Procedure (for brevity "the Code") seeking to set aside the order granting regular bail to the respondent by the Judicial Magistrate of the First Class, Thiruvananthapuram.

2. The factual background of the proceedings under challenge can be briefly set out in the following lines:

About an hour after midnight on 3.8.2019, Sri.K.Muhammed Basheer, the Unit Chief of "Siraj Daily", was returning back home in a Bike. At or about the same time, the respondent herein, who is a young IAS officer and occupying a prominent position in the administrative setup in the State, after some personal engagement, exchanged messages with his female friend and requested her to give him a lift to his place of residence. She was asked to come to a spot near Kawdiar, Thiruvananthapuram in her car. She obliged and she reached the place as requested and found the respondent. The respondent offered to drive the car and his request was acceded to by the lady. She sat on the passenger seat. After taking on the wheels, the respondent is alleged to have driven the vehicle in a very rash and negligent manner and that too, at breakneck speed. Sri.Basheer, who had no idea as to the misfortune that was to befall upon him, was riding in front. It is alleged that the car driven by the respondent crashed on the back side of the bike,

throwing Basheer to the tarmac. He suffered fatal injuries. The devastating sound of the incident reached the ears of the police officers of the Museum Police Station which is situated nearby. They rushed to the place without any delay. By that time, several eye witnesses had also gathered round. The eye witness accounts reveal that the respondent as well as his lady friend had come out of the car. The respondent lifted the injured in his arms and was seen screaming for help. Some witnesses also say that the smell of alcohol emanated from his breath. Basheer was rushed to the Medical College Hospital in an ambulance. However, his life could not be saved and he was pronounced dead on arrival. The respondent also suffered some concussions and injuries and he was removed to the General Hospital, Thiruvananthapuram, for treatment.

3. Crime No.1656 of 2019 was registered at 7.26 a.m. on the same day under Sections 304A and 279 of the IPC based on information furnished by a colleague of Sri.Basheer. As to why the police had to wait seven hours to register the crime is a mystery, they being the persons who had shifted the injured to the hospital.

4. On the same day at 5.45 p.m, the arrest of the respondent was recorded and a report was sent to the learned Magistrate. In the said report, there is no variation in the nature of offence alleged against him.

5. It appears that the statement of the co-passenger was recorded by the learned Magistrate under Section 164 of the Cr.P.C. on the same day itself. Immediately thereafter, she was arrayed as an accused for having instigated the respondent to commit the offence.

6. It further appears that the respondent, who was undergoing treatment at the General Hospital, was ordered to be shifted to the Medical College Hospital for treatment. Instead, the respondent was taken to the KIMS Hospital, a private Hospital at Thiruvananthapuram, where he was administered treatment as inpatient. His blood samples were collected and the same was sent to the Chemical Examiners Laboratory.

7. Immediately thereafter, a report was sent to the learned Magistrate deleting Sections 279 and 304A of the IPC and replacing them with Section 304 of the IPC and Sections 184, 185, 188 of the Motor Vehicles Act, 1988.

8. Later, report of blood analysis was received from the Chemical Examiners Laboratory. The presence of Ethyl Alcohol was not detected in the blood sample.

9. It is in the above backdrop that the respondent approached the learned Magistrate and moved an application for bail. The learned Magistrate took note of the fact that Ethyl Alcohol was not detected in the blood sample

of the accused. By adverting to the sequence of events, the learned Magistrate came to the conclusion that incorporation of Section 304 of the IPC at a later stage coupled with Section 185 of the Motor Vehicles Act was on account of the impression gathered by the police that the respondent had consumed alcohol while driving the vehicle. As the test was negative, the learned Magistrate concluded that, prima facie, no materials were available to show that the accused, either intended to cause the death of the victim or that he had knowledge that death was likely to be caused by his acts. The learned Magistrate proceeded to grant bail by imposing stringent conditions.

10. The above order is under challenge.

11. Heard Sri K.V. Sohan, the learned State Attorney, who appeared for the State, and Sri.S.Rajeev, the learned counsel appearing for the respondent.

12. Sri K.V. Sohan, the learned State Attorney persuasively argued that the learned Magistrate had committed a grave error in assuming jurisdiction and granting bail in a crime which admittedly, carries imprisonment for life and is triable by a Court of Session. He contended that the investigation is still in the preliminary stage and the materials collected till date reveals that the respondent had driven the car in a rash manner with the knowledge that his act is likely to result in death. His senses were blurred as

he was under the influence of alcohol. Being a responsible IAS officer, he will have to be attributed with knowledge of the consequences. According to the learned State Attorney, the respondent is a man, who is capable of wielding much influence, and if he permitted to remain on bail, it would adversely affect the investigation. He may even tamper with the evidence and influence witnesses.

13. Sri.S.Rajeev, the learned counsel appearing for the respondent, would valiantly and with fervour oppose the submissions. He referred to the sequence of events and submitted that the crime was initially registered under Sections 304A and 279 of the IPC. Report incorporating Section 304 of the IPC and Sections 184, 185 and 188 of the Motor Vehicles Act was added under the premise that the respondent had driven the car under the influence of alcohol. However, the chemical analysis report, which was received from the lab, revealed that there is no truth in the said accusation. The mere statement by certain witnesses or the doctor, who examined the respondent, that there was smell of alcohol will not attract the provisions of the Motor Vehicles Act, 1988, which mandates that the person should have a minimum of 30mg of alcohol in 100ml of blood. According to the learned counsel, those records were brought into existence later by the police at the instance of powerful persons, who are inimical to the respondent. He would contend that the crime occurred in the early hours and the persons, who had rushed to the

scene of crime, have been questioned. He also argued that the respondent was not the person, who had actually driven the car. He pointed to the nature of injuries sustained by the respondent and also the damages caused to the car to bolster his submission. According to the learned counsel, the respondent is still undergoing treatment in the hospital. He would urge that the learned Magistrate, after anxious appraisal of all facts and the factual backdrop, had come to the conclusion that there were no reasonable grounds for believing that the accused had committed the offence punishable with death or imprisonment for life and in that view of the matter, the order cannot be said to be perverse. He would argue that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. None of those circumstances have been made out, contends the learned counsel.

14. I have anxiously considered the submissions and have perused the entire case diary.

15. Before delving into the submissions advanced, it would be worthwhile to remind oneself of the words of the Apex Court in **Kashi Nath Roy v. State of Bihar**[1], wherein it was opined that under the criminal jurisprudence obtaining in this country, courts exercising bail jurisdiction should refrain from indulging in elaborate reasoning in their orders in

1 (1996 (4) SCC 539)

justification of grant or non-grant of bail. For, in that manner, the principle of "presumption of innocence of an accused" gets jeopardized; and the structural principle of "not guilty till proved guilty" gets destroyed. Whatever observations made by a court while granting bail to an accused are tentative and not final, and it would have no effect on the merit of the matter.

16. In that view of the matter, this Court, while considering the application for cancellation of bail, will also not be justified in appreciating the materials at this stage and passing a *prima facie* finding that the offence attracted is one under Section 304 of the IPC as contended by the State or Section 304A as argued by the respondent. If any such finding is rendered at this *prima facie* stage, it is likely to cause prejudice.

17. However, the question that demands an answer is whether the learned Magistrate had exceeded its powers in granting bail to the respondent in the peculiar facts of the instant case, for which purpose, certain aspects need to be adverted to.

18. It would be worthwhile to recollect that the crime was registered originally under Sections 304A and 279 of the IPC, which are bailable offences. Insofar as Section 304A of the IPC is concerned, it deals with death caused by doing any rash or negligent act where such death is caused neither intentionally nor with the knowledge that the act of the offender is likely to

cause death. The applicability of Section 304A of the IPC is limited to rash or negligent acts which cause death but fall short of culpable homicide amounting to murder or culpable homicide not amounting to murder. An essential element to attract Section 304A IPC is death caused due to rash or negligent act. The three things which are required to be proved for an offence under Section 304A of the IPC are :

(1) death of human being;

(2) the accused caused the death and

(3) the death was caused by the doing of a rash or negligent act, though it did not amount to culpable homicide of either description.

Like Section 304A, Sections 279, 336, 337 and 338 are attracted when an offence is committed in consequence to a rash and negligent act. The scheme of the above penal provisions leaves no manner of doubt that these offences are punished because of the inherent danger of the acts specified therein irrespective of knowledge or intention to produce the result and irrespective of the result. (See **Alister Anthony Pareira v. State of Maharashtra**[2]). Section 304A of the IPC does not apply to cases, where there is an intention to cause death or knowledge that the act done will in all probability to cause death. It only applies to cases in which without any such intention or

2 (2012) 2 SCC 648

knowledge, death is caused by what is described as a "rash" or "negligent" act.

19. Section 304 of the IPC, on the other hand, has three limbs to it. To attract the offence it has to be shown that

(1) An act done with the intention of causing death;

(2) An act with the intention of causing bodily injury as is likely to cause death;

(3) An act done with the knowledge that he is likely by such act to cause death.

20. Parts I and II of Section 304 of the IPC would apply in a different fact scenario. If the bodily injury as is likely to cause death is intentionally caused and results in the death of the victim, the case would fall under Part I of Section 304. On the other hand, Part II comes into play when death is caused by doing an act with knowledge that it is likely to cause death and when such act is the infliction of bodily injury and the infliction is not intentional. It is also settled that mere knowledge of likelihood of causing death or bodily injury which would ultimately result in death, would be sufficient to charge the accused under Section 304 of the IPC.

21. With the above understanding, if one peruses the records, it appears that the arrest of the respondent arrest was recorded at 5.45 am on 3.8.2018. The report of arrest submitted before the learned Magistrate reveals

that the offences alleged are under Sections 304A and 279 of the IPC. Later, the investigating officer appears to have stumbled on the information that the respondent was driving under the influence of alcohol. The statements of witnesses reveal the said fact. In the medical examination report, the doctor has also stated that smell of alcohol is positive. It was on its basis that a report was submitted before court incorporating Section 184 of the Motor Vehicles Act, which penalises driving dangerously, Section 185, which penalises driving by a drunken person or by a person under the influence of drugs, and Section 188, which provides for punishment for abetment of Section 184 or Section 185 of the MV Act, 1988. Section 304 of the IPC was also added along with.

22. To bring home the finding of guilt of a person under Section 185 of the Motor Vehicles Act, it has to be shown that he had in his blood, alcohol exceeding 30 mg per 100 ml of blood detected in a test by a breath analyser or it has to be shown that the person was under the influence of a drug to such an extent as to be incapable of exercising proper control of the vehicle. The chemical analysis report which is made available before this Court reveals that no amount of Ethyl alcohol was detected in the blood. Much arguments were advanced by the State Attorney that the respondent had given false information to the police. The respondent was brought to the hospital few minutes after 1 a.m and that too by the officers of the Museum Police Station.

They were bound to act in accordance with Sections 202 to 205 of the Motor Vehicles Act. After failing to follow the procedure contemplated under the relevant statute, the Police cannot rely on eye witness accounts and assert that the offence under Section 185 of the MV Act would apply.

23. Now as regards the power of the learned Magistrate to grant bail in a case of this nature, under Section 437 of the Code when a person accused of, or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a Police Station or appears or is brought before a court, he may be released on bail by a court other than the High Court and Sessions subject to the condition that he does not reasonably appear to have been guilty of an offence punishable with death or imprisonment for life. The condition of not releasing the person on bail charged with an offence punishable with death or imprisonment for life shall not be applicable if such person is under the age of 16 years or is a woman or is sick or infirm, subject to such conditions as may be imposed. It does not, however, mean that persons specified in the first proviso to sub-section (1) of Section 437 should necessarily be released on bail. The proviso is an enabling provision which confers jurisdiction upon a court, other than the High Court and the Court of Session, to release a person on bail despite the fact that there appears reasonable ground for believing that such person has been guilty of an offence punishable with death or imprisonment for life.

There is no gainsaying that the discretion conferred by the Code has to be exercised judicially.

24. In **Prahlad Singh Bhati v. NCT, Delhi**[3], it was held by the Apex Court that though there is no legal bar for a Magistrate to consider an application for grant of bail to a person who is arrested for an offence exclusively triable by a Court of Session yet it would be proper and appropriate that in such a case the Magistrate directs the accused person to approach the Court of Session for the purposes of getting the relief of bail. The Apex Court further held that if the learned Magistrate proceeds to consider such an application, he shall negate the existence of reasonable ground for believing that such an accused is guilty of an offence punishable with the sentence of death or imprisonment for life. It was further held that the assumption of jurisdiction to entertain the application is distinguishable from the exercise of the jurisdiction. As held by this Court in **Antony Cherian v. Purushothaman Pillai**[4], the restriction imposed by the legislature is that when " there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life" such person shall not be released on bail by the learned Magistrate. In the case on hand, the learned Magistrate after a detailed evaluation of the

3 (2001) 4 SCC 280]

4 (1987 (2) KLT 125)

materials came to the prima facie conclusion that there are no reasonable grounds for believing that the respondent was guilty of an offence punishable with death or imprisonment for life. There is yet another matter. The prosecution has no case that the act was done with the intention of causing death or with the intention of causing bodily injury as is likely to cause death so as to attract Part I of Section 304 of the IPC. The specific case of the prosecution is that the respondent had knowledge that he is likely by such act to cause death which would attract Part II of Section 304 of the IPC which is punishable with imprisonment for a period of ten years or with fine or with both. Therefore, in a technical sense, the embargo under Section 437(1)(i) of the Cr.P.C. may not strictly apply in the instant case.

25. The next question is whether the bail granted is liable to be cancelled. It has been held that generally the grounds for cancellation of bail are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The Apex Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where the court, ignoring material and evidence on record, passes a perverse order in a heinous crime and that too without giving any reasons. Such an order would be against all tenets of law. Interest of justice would also require that such a perverse order

be set aside and bail be cancelled and an arbitrary and wrong exercise of discretion by the trial court will have to be corrected. (See **Puran v. Rambilas and Anr.**[5]).

26. To assess whether the order passed by the court below is perverse and arbitrary, I have also independently evaluated the materials. As has been held by the Apex Court in numerous reports that, while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at that stage, to have the evidence establishing the guilt of the accused beyond

5 (2001 (6) SCC 338)

reasonable doubt. (See **Ash Mohammad v. Shiv Raj Singh**[6], **Chaman Lal v. State of UP**[7], **Prasanta Kumar Sarkar v. Ashish Chatterjee**[8] and in **Ranjit Singh v. State of Madhya Pradesh and Others**[9]**).**

27. In the case on hand, after having meticulously scrutinized the records I do not think that there is any reason to upset the order passed by the learned Magistrate. The respondent is an IAS officer with a clean track record. During the relevant point of time, he was functioning as the Director, Directorate of Survey and Land Records. The incident had occurred in the dead of night and the available witnesses have all been questioned. There cannot be any difficulty in securing the presence of the respondent at the stage of investigation or trial. The prosecution has no case that the respondent will be in a position to terrorise the witnesses or tamper with the evidence. Even if there is any such apprehension, necessary conditions have been imposed by the learned Magistrate to allay any such apprehension. Having considered the facts and circumstances, I am of the view that the learned Magistrate has not committed any jurisdictional error in granting bail to the respondent, nor has she gone wrong in exercising her discretion in favour of granting bail to the respondent. Though I have refused to unsettle

6 (2012) 9 SCC 446

7 (2004) 7 SCC 525

8 (2010) 14 SCC 496

9 (2013) 16 SCC 797)

the order passed by the learned Magistrate, it is made clear that the opinions expressed above shall not be treated as expressions on merits of the case and the investigating officer shall proceed with the investigation, untrammelled by any of the observations above.

28. Before parting with this matter, certain disturbing facts need to be stated. The case diary shows that that the investigation of the crime, which commenced from its registration, has been shoddy and desultory. It needs to be mentioned that the incident had taken place within a stones throw from the Police Head Quarters and that too in the capital city of the State. The tenor of the argument of the learned State Attorney appears to be that the respondent was instrumental in successfully diverting the investigation. An accused in a crime cannot be expected to provide materials to the police to unravel the truth behind a crime. The breath test, which is mandatory for a successful prosecution for the offence under Section 185 of the MV Act, is a non-intrusive test. The explanation offered by the police for their failure to conduct a breath test as mandated under the statute cannot be accepted. I find from the records that the police had installed cameras at vantage points in the city. The road wherein the incident had allegedly taken place is no exception. From the report of the concerned officer available in the case diary, it appears that the cameras were not functioning. Less said about the delay in obtaining the chemical analysis certificate, the better. Instead of

setting up Chemical Examiners Laboratories in all Districts in the State to efficiently provide data for investigation immediately after the crime, there is no point in crying hoarse about the delay or inefficiency in the investigation.

29. The police need to have a specific game plan to ensure that all available evidence are collected systematically in criminal cases to ensure that the accused is successfully prosecuted in a court of law. It is high time that the decision makers realise that for a successful prosecution, intense coordination is required during the investigative phase so that evidence is gathered systematically by using general and specific investigating tools. Lapses occur due to incompetence or proper training of the police officers and also due to the failure in applying proper investigative techniques. The decision makers should realise that unless the investigative machinery is spruced up to make it at par with a modern police force, persons who violate the law will go scot-free. Though this Court has time and again issued directions to the police to streamline their procedure and adopt modern scientific techniques, this case is a sad testament of the lack of professionalism in the police force. The officer who had registered the crime or the officer who conducted the initial investigation are not the persons who are to be blamed. The police department need to lay down a "Best Practices Code" to ensure that such mistakes are not committed in future. They should realise that the effort of the police should be to gather all collectible evidence

to the fullest extent possible. Only such an endeavour will help in maintaining the rule of law, achieve justice and restore dignity to the victims. Investigation being in the exclusive realm of the police, if they are found wanting in any manner, it would have a spiralling effect and may lead to the complete breakdown of law and order. Instead of getting blamed for doing too little too late, urgent measures need to be taken by the State Police to streamline criminal investigation and to ensure that the police force is efficient, responsive and professional.

With the above observations, I dismiss this petition.

Sd/-

RAJA VIJAYARAGHAVAN. V.,
JUDGE

Ps/13/8/2019

//TRUE COPY// P.S. TO JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE A	**TRUE COPY OF THE ORDER DATED 06.08.2019 IN CMP NO.2958/2019 BY THE JFMC III THIRUVANANTHAPURAM.**