

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

MONDAY, THE 13TH DAY OF SEPTEMBER 2021 / 22ND BHADRA, 1943

BAIL APPL. NO. 5658 OF 2021

CRIME NO. 106/CB/KNR/KSD/R/2021 OF CRIME BRANCH, KANNUR ARISING

OUT OF CRIME NO. 118/2021 OF CHOKLI POLICE STATION

PETITIONERS/ACCUSED NO. 1,3 TO 6, 8 TO 12:

- 1 SHINOS.K.K
AGED 30 YEARS
S/O.ASHOKAN,KORUMBAN KANDY,P.O.POOKOM,
THALASSERY TALUK,
KANNUR DISTRICT,
PIN-670672
- 2 SANGEETH.O,
S/O CHANDRAN,AGED 22 YEARS,OTHAYOTH
HOUSE,P.O.PULLOOKKARA,THALASSERY TALUK,
KANNUR DISTRICT-670676.
- 3 SREERAG.K.K,
S/O.RAVEENDRAN,AGED 26
YEARS,NELLYAILVEEDU,P.O.PULLOOKKARA,
THALASSERY TALUK,KANNUR DISTRICT-670676.
- 4 SHUHAIL.K.P,
S/O MUHAMMED ALI,
AGED 32 YEARS,KAYATHEENTAPARAMBATH,PULLOOKKARA.P.O,
THALASSERY TALUK,KANNUR DISTRICT-670676.
- 5 ASWANTH.P,
S/O.ASHOKAN, AGED 29
YEARS,PUTHANPURAYIL,P.O.PULLOOKKARA,
THALASSERY TALUK,
KANNUR DISTRICT,PIN-670676.
- 6 ANEESH.O,
S/O.GOVINDAN,AGED 39 YEARS,OTHAYOTH
HOUSE,P.O.PULLOOKKARA,THALASSERY TALUK,
KANNUR DISTRICT-670676.
- 7 BIJESH.E.K,
S/O.BALAN,AGED 37
YEARS,ELIKUTTEENTAVIDA,P.O.PULLOOKKARA,
THALASSERY TALUK,
KANNUR DISTRICT-670676.
- 8 VIPIN.O,
S/O.VASU,AGED 27 YEARS,OTHAYOTH

HOUSE, P.O. PULLOOKKARA, THALASSERY TALUK,
KANNUR DISTRICT-670676.

- 9 PRASOB.A.P,
S/O.BALAN, AGED 35
YEARS, ANAKETTIYAPARAMBATH, P.O.KADAVATHOOR,
MUNDATHODU, THALASSERY TALUK, KANNUR DISTRICT-670676.
- 10 NIJIL,
S/O KUMARAN, AGED 25 YEARS, THAZHANELLAYIL
HOUSE, P.O. PULLOOKKARA,
THALASSERY TALUK,
KANNUR DISTRICT-670676.

BY ADVS.
P.VIJAYA BHANU (SR.)
K.VISWAN
M.REVIKRISHNAN
D.ARUN BOSE

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682031.
- 2 DEPUTY SUPERINTENDENT OF POLICE,
CRIME BRANCH,
KANNUR-670002.
- * ADDITIONAL R3 IS IMPEADED
- 3 SAKKEENA
AGED 53 YEARS
W/O. MUSTAFFA, RESIDING AT 'SHIFA', KUVVAPURATHIL,
PULLOOKKARA P. O., CHOKLI, KANNUR - 670672

IS IMPEADED AS ADDITIONAL R3 AS PER THE ORDER DATED
03-08-2021 IN CRL. M. A. 02/2021 IN BA. 5658/2021

R1 & R2 BY SMT. SREEJA V., SENIOR PUBLIC PROSECUTOR
SRI.RENJITH T.R., SENIOR PUBLIC PROSECUTOR
R3 BY ADVS. C.K.SREEDHARAN
SUNNY MATHEW

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
07.09.2021, THE COURT ON 13.09.2021 PASSED THE FOLLOWING:

ORDER

Petitioners who are 10 in number are accused 1, 3 to 6, 8 to 12 respectively in Crime No. 118/2021 of Chokli police station which was registered on 07.04.2021 alleging offence under Sections 143, 147, 148, 341, 323, 324, 326, 307 read with 149 of the Indian Penal Code and also under Sections 3 and 5 of the Explosive Substances Act. The crime had originated on the basis of the First Information Statement given by one Rafeeq, who is the uncle of the injured, Muhasin and Mansoor. In the incident, the said Muhasin and Mansoor, who were brothers sustained grievous injuries. Later the said Mansoor succumbed to the injuries and thus offence under Section 302 of the IPC was also incorporated. During the course of investigation, offence under Sections 25(1)(B)(b) and 27(1) of the Arms Act were also added.

2. On conclusion of investigation, charge sheet has been laid against 12 accused persons, including the petitioners. Before the arrest, 2nd accused committed suicide and the 7th accused is absconding. Others have moved this court under Section 439 of the Cr.P.C. seeking their release on bail.

3. Before the case was taken up for hearing, the mother of the deceased and injured, Mansoor and Muhasin got herself impleaded as additional third respondent.

4. I heard the learned Senior counsel for the petitioners, learned Senior Public Prosecutor and also the learned counsel for the additional third respondent.

5. The learned counsel for the petitioners submitted that on conclusion of investigation, charge sheet has already been laid on 05.07.2021, that the petitioners were arrested between 07.04.2021 and 07.05.2021, 8th petitioner had surrendered on 16.04.2021, that all recoveries have been effected and therefore, their further detention is not warranted. According to the learned counsel, even though it was alleged in the First Information Statement that the injured and deceased were attacked using a sword etc., no such sword has come to the notice of the Investigating Officer and the final report is laid as if they had attacked the injured and the deceased using wooden stick, iron pipe and bomb. According to him, the said Muhasin had sustained only minor injuries. Petitioners 2, 3, 6, 7, 8 and 10 do not have criminal antecedents and petitioners 1 and 5 were involved in one case each

and petitioners 4 and 9 have two cases each to their credit. They are prepared to abide any condition imposed by the court. The learned counsel also submitted that material witnesses are father, brother and neighbours of the deceased and the injured and all of them are Muslim League activists whereas the petitioners/the accused belong to rival political party, the CPI(M).

6. According to the learned counsel, even 10 year old sessions cases are pending in the sessions division and therefore, detaining the petitioners indefinitely in jail is not in public interest.

7. The counsel for the additional third respondent strongly opposed the application. According to him, it was a pre-planned political murder committed by the activists of the ruling party, on the eve of the general election, on 06.04.2021. That day between 1.00 P.M. and 1.30 P.M., some political clashes had taken place, out of which Muhasin CW2, the booth agent was sought to be killed by the assailants. When he had moved on a motorcycle, he was intercepted by the mob, the accused persons, and hurled bomb at him. The deceased, the brother of CW2, had reached there to save his brother and in the bomb blast, he suffered fatal injuries and later succumbed to the injuries. According to the learned counsel, very

serious injuries were suffered by CW2 also. The allegations against the petitioners are very serious and there are reasonable apprehension that they would tamper with evidence. All the 10 eyewitnesses including three injured are neighbours. If the petitioners are released on bail, there may not be free and fair trial due to the threats which would be made by the petitioners, who are highly influential. According to the learned counsel, the fact that the final report is laid is not a reason for granting bail to the petitioners. Rights and liberty of the victims and witnesses are also equally important as that of the accused persons. According to the learned counsel, granting bail to such persons who are suspects of a heinous crime will send a wrong message to the public. It would embolden the petitioners to repeat such political violence in future and will subvert trial itself. So he strongly pleaded for rejecting the application.

8. I also heard the learned Senior Public Prosecutor who said that except the 7th accused, all have been arrested and the second accused is no more. According to him, accused Nos. 1 and 6 have one crime each to their credit, accused Nos. 4 and 11 have two crimes each and three crimes are pending against the fifth accused.

9. It is the common case that the case was originally registered as Crime No. 118 of 2021 of Chokli police station on 07.04.2021 on the basis of the First Information Statement given by one Rafeeq. Later, after the death of Mansoor, Section 302 of the IPC was also incorporated. After initial investigation, investigation was made over to the Crime Branch, where Crime No. 106/CB/KNR/ KSD/R/2021 of Crime Branch, Kannur was registered; on completion of investigation charge sheet has already been laid on 05.07.2021.

10. After hearing learned counsel on both sides, this court called for a report from the Sessions Judge, Thalassery, on the total number of sessions cases pending in that Sessions division and also the number of murder cases where custodial trial is going on. Similarly, the second respondent, the Investigating Officer was directed to give a report on the apprehensions raised by the third respondent in the event of the petitioners released on bail. Pursuant to the said direction, the learned Sessions Judge through his communication dated 27.08.2021 informed that the total number of sessions cases pending in that division is 5498, in which number of murder cases where custodial trial is intended is 8. That means the

Sessions Courts in Thalassery division are very heavy. The second respondent filed a report regarding the apprehensions raised by the learned counsel for the additional third respondent. According to the second respondent, though the native place of the accused persons and the place of occurrence are politically sensitive in nature, law and order situation is at present satisfactory. He has also added that chances of occurring untoward incidents connected with this incident cannot be ruled out. He has further reported that the police is mindful of the situation and equipped with sufficient force to maintain law and order in that locality. Police is taking all efforts to avoid any kind of intimidation and influence on the witnesses at the hands of accused or from the political party to which they belong to.

11. I have no doubt that the incident was the culmination of political rivalry between the activists of the CPI(M), who are the petitioners and rival political group i.e., Indian Union Muslim League. Injured CW2 and the deceased were activists of the Muslim League. CW2 was the booth agent in a particular booth and the incident had happened on the eve of the last Assembly elections. It has come out that there were some clashes between the

two groups between 1.00 P.M. and 1.30 P.M. on 06.04.2021 and on the fateful day. Later, while Muhasin, CW2 was moving on his motor cycle, a gang of persons, including the petitioners intercepted and attacked him with dangerous weapons; country made bombs were also hurled at him and certainly the said Mansoor sustained serious injuries and later succumbed to the injuries.

12. Petitioners were arrested between 07.04.2021 and 07.05.2021. One of them surrendered voluntarily. The seventh accused is still at large. The second accused committed suicide and this is the history of the case.

13. Now it is very clear that final report was laid on 05.07.2021. No doubt, the allegations against the accused are very grave. Still, so long as the final report is laid, it is not in the interest of justice, unless overwhelming reasons are made out, to keep the suspects in custody. The presumption of innocence is always the guiding factor for the Court. The accused can be detained in custody indefinitely only if very strong circumstances are made out. Here from the version of the Senior Public Prosecutor it is patent that except accused Nos. 1, 4, 5, 6 and 11, all are first time offenders. Accused Nos. 1 and 6 have one crime each to their

credit. Accused Nos. 4 and 11 have two crimes each and 5th accused has three crimes to his credit. They are on bail in all other cases. Others do not have criminal antecedents. Even though the allegations against the petitioners are very serious, considering these aspects it seems that this is not a valid reason for detaining the petitioners in custody indefinitely.

14. Thalassery is a hub of political rivalry and clashes. Huge number of sessions cases are pending in the courts. In the circumstances, it is unlikely that the trial of the case will be able to be taken up in the near future. That would result in protraction of trial and indefinite detention of the petitioners in custody. Such a pre-trial detention is not expedient nor in public interest. Moreover, we are still in the grip of the Covid pandemic. The hon'ble Supreme Court has issued various guidelines for easing the crowd in prisons. It is the policy of Courts to ease overcrowding in prisons and therefore, that aspect also impels this Court to think of granting bail to the petitioner.

15. Added to this, it has come out that all the material witnesses are members or sympathisers of the Indian Union Muslim League, rival political fraction of the accused. Normally,

such witnesses are not susceptible to any kind of influence, that might be exerted by the accused in the event of their release on bail.

16. On an overall consideration of these circumstances, the Court cannot ignore the well known principle that the bail is the rule and jail exception. I am of the view that the petitioners can be released on bail on stringent conditions. They shall be released on bail on the following conditions:-

- i) The petitioners shall execute bond for Rs.2,00,000/- (Rupees Two lakhs only) each with two solvent sureties each for the like sum to the satisfaction of the jurisdictional court;
- ii) They shall surrender their passports within ten days from the date of release on bail before the trial court. If they do not possess passport, an undertaking shall be filed to that effect;
- iii) They shall not try to contact or influence the witnesses or tamper with the evidence;
- iv) They shall not involve in any crime during the bail period;
- v) They shall not enter Kannur Revenue district until the examination of all material witnesses except for the purpose of attending courts;
- vi) They shall appear before the Investigating Officer/trial court as and when required;

- vii) The petitioners shall strictly follow the various guidelines issued by the State and Central Governments with respect to keeping of social distancing in the wake of Covid 19 pandemic;
- viii) If any of the above conditions are violated by the petitioners, the jurisdictional Court will be at liberty to cancel the bail in accordance with law.

SD/-

K. HARIPAL

JUDGE

DCS/09.09.2021