

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 28TH DAY OF SEPTEMBER 2018 / 6TH ASWINA, 1940

Bail Appl..No. 5351 of 2018

(S.C. NO.901/2018 ON THE FILE OF THE PRINCIPAL SESSIONS
COURT, THIRUVANANTHAPURAM IN CRIME NO. 302/2018 OF
PALLICKAL POLICE STATION, THIRUVANANTHAPURAM)

PETITIONER/6TH ACCUSED:

SUBHASH @ SANU,
S/O BALAKRISHNAN, AGED 33, KIZHAKATHIL
VEEDU, KUZHIKARA, KUREEPUZHA CHERI,
SAKTHIKULANGARA, KOLLAM DISTRICT-691581.

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
THROUGH THE STATION HOUSE OFFICER, PALLIKAL
POLICE STATION, REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-
682031.

BY SENIOR PUBLIC PROSECUTOR SRI.C.N.PRABHAKARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
28.09.2018, ALONG WITH B.A. NOS.6312/2018 & 5766/2018, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

These applications are filed under Section 439 of the Code of Criminal Procedure.

2. The applicant in B. A. No. 6312 is the 2nd accused, the applicant in B.A.No.5766 of 2018 is the 5th accused and the applicant in B.A. No. 5351 of 2018 is the 6th accused in S.C. No 901/2018 on the file of the Principal Sessions Judge, Thiruvananthapuram, which has arisen from Crime No. 302 of 2018 registered at the Pallickal Police Station. In the above case, the applicants herein along with the other accused are being prosecuted for having committed offences punishable under Sections 302, 307, 120 B, 449, 201, 202, 212 r/w Section 34 of the IPC. Since the applicants herein are the accused in the same Crime, all these applications are considered and disposed of by a common order.

3. The prosecution allegation as per the charge can be briefly detailed as under:

The 1st accused is a businessman with establishments at Qatar in the middle east. The relationship between the 1st

accused and his wife became strained and it ended in the dissolution of their marriage. He believed that his wife was in an adulterous relationship with a certain Rajesh, with whom, she was maintaining constant contact. He resolved to murder Rajesh and to achieve his object, conspired with the 2nd accused, who was his friend, employee and gym trainer, all rolled into one. The 2nd accused, who was hired for the purpose by the 1st accused, contacted accused Nos. 3, 4, 5 and 7 and hatched a conspiracy to do away with Rajesh. They also assembled in the house of the 6th accused, who is a member of a whatsapp group in which the 3rd accused is a member, and they are alleged to have chalked out a plan to liquidate Rajesh. Weapons and vehicles were mobilized and necessary arrangements were made to make good their escape without leaving any trace. On 26.3.2018, in the late hours, the accused Nos. 2 to 4 proceeded in a Maruti swift car, which was hired for the purpose, and reached the recording studio of the deceased. The accused Nos. 2 to 4 entered the studio and found that CW1, a close friend of Rajesh, was with him. The accused No.4 with intent to murder, flashed a bill-hook and inflicted serious injuries on the body of CW1. After injuring CW1 as aforesaid, the accused Nos. 2 and 3 entered the studio and after cornering Rajesh, with intent to

commit murder, inflicted a series of cut injuries with swords. After ensuring that Rajesh would not survive, the accused are alleged to have left the scene. Rajesh was rushed to the hospital, however, his life could not be saved. Based on the statement furnished by CW1, a crime was registered on 27.3.2018. Investigation was taken over by the Inspector of Police, Kilimanoor, who laid the final report before Court.

4. Sri. B.Raman Pillai, the learned Senior Counsel appearing for the 2nd accused, Sri. Siju Kamalasanan, the learned counsel appearing for the 5th accused, and Sri.Sasthamangalam S. Ajith Kumar, the learned counsel appearing for the 6th respondent were heard in detail. For and on behalf of the State, Sri. Amjad Ali, the learned Public Prosecutor, addressed arguments.

5. The learned Senior Counsel appearing for the 2nd accused submitted that the 2nd accused was roped in at a later stage on the basis of false and concocted materials. According to the learned Senior Counsel, there was no way in which the injured witness could have identified the 2nd accused as, even according to him, he only had a fleeting glimpse of the

assailants. It is further submitted that the 2nd accused herein, who was leading a respectable life abroad, was picked up on 10.4.2018 and he continues to be in custody. The final report having been laid, his further detention would not serve any purpose is the submission. According to the learned Senior Counsel, as many as 146 witnesses have been cited and there would occur considerable delay in concluding the trial.

6. The learned counsel appearing for the accused Nos.5 and 6 submitted that the prosecution has no case that they were present at the scene of crime or that they had inflicted any injuries on the deceased. According to the learned counsel, they have been roped in with the aid of Section 120B of the IPC. It is further submitted that the accused Nos. 7 to 12 have already been enlarged on bail by the jurisdictional court taking note of the nature of allegations against them. The learned counsel appearing for the 6th accused would further submit that the allegation against the said accused is that the accused Nos. 2 to 5 assembled in his house prior to and after the commission of the offence. It is submitted that the 6th accused was given notice to appear by the investigating officer and in obedience to the same, he had appeared on 5.4.2018. He was interrogated in

detail and thereafter, his arrest was recorded. According to the learned counsel, the fact that he had not absconded would clearly show his innocence. It is further submitted by the learned counsel that accused Nos. 5 and 6 are not persons with criminal antecedents and it is prayed that they be issued with orders of their release on bail.

7. The learned Public Prosecutor has fervently opposed the prayer. It is submitted that the 1st applicant is a contract killer, who was employed by the 1st accused to come down to India and annihilate the deceased. He was the person who arranged accused Nos. 2 to 4 and hatched a conspiracy to do away with Rajesh. It is further submitted that the 2nd accused had trespassed into the recording studio and he was one of the persons who had inflicted fatal injuries on the body of Rajesh. CW1, the injured eye-witness, has spoken about his presence at the scene of crime and has identified the 2nd accused as one of the assailants. It is further submitted that the 1st accused, who hired the 2nd accused, is still at large. Furthermore, it was after considerable effort that the 2nd accused, who had left India after the commission of the offence, was apprehended from abroad. Insofar as the 5th accused is

concerned, it is submitted that he was also a party to the conspiracy and he was the person who had arranged the weapons which were used by the accused for commission of the offence. Insofar as the 6th accused is concerned, it is submitted that he had permitted the accused Nos. 2 to 5 to stay in his house prior to the commission of the offence. He was also a party to the conspiracy hatched by the accused. It is submitted that after committing the murder, the accused had returned to the house of the 6th accused and they had escaped after concealing the weapons, which was recovered later.

8. I have anxiously considered the submissions advanced by both sides and have gone through the case diary, and the final report which was made available. Having considered the submissions, the apprehension expressed by the prosecution insofar as the 2nd accused is concerned appears to be justified. From the final report, it appears that the 2nd accused is a hired killer, who had come down to India with a definite plan to exterminate the deceased Rajesh. The star witness of the prosecution, who is also an injured, speaks about the role of the 2nd accused. The apprehension of the prosecution is that if the 2nd accused is released on bail, there is every

chance that he would make himself scarce. The said concern appears to be justified. Furthermore, the allegation against the 2nd accused is extremely grave. In that view of the matter, I am not inclined to allow this application, insofar as it concerns the 2nd accused. However, insofar as accused Nos. 5 and 6 are concerned, having regard to the nature and gravity of the allegations levelled against them, the role assigned, the materials in support thereof, their antecedents and attendant facts, I am of the considered view that their further detention in custody is not required.

In the result, B.A. No.6312 of 2018 will stand dismissed and B.A. Nos.5766 & 5351 of 2018 will stand allowed. The applicants in B.A. Nos.5766 & 5351 of 2018, who are accused Nos.5 and 6, shall be released on bail on their executing a bond for Rs.1,00,000/- (Rupees One lakh only) each with two solvent sureties each for the like sum to the satisfaction of the court having jurisdiction. The above order shall be subject to the following conditions:

- 1). The accused Nos. 5 and 6 shall not intimidate or attempt to influence the witnesses; nor shall they tamper with the evidence.
- 2). They shall not commit any offence while on bail.

3). They shall not leave India without the permission of the Court and if having passport, shall deposit the same before the trial court within a week; If release of the passport is required at a later period, the applicants shall be at liberty to move appropriate application before the court having jurisdiction.

In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with the law.

Sd/-
RAJA VIJAYARAGHAVAN V.,
JUDGE

ps/28/9/2018

//TRUE COPY//

P.S. TO JUDGE