

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.S.DIAS

TUESDAY, THE 30TH DAY OF JANUARY 2024 / 10TH MAGHA, 1945

BAIL APPL. NO. 3491 OF 2022

CRIME NO.334/2019 OF KODANCHERY POLICE STATION, KOZHIKODE

AGAINST THE ORDER IN Bail Appl. 5318/2020 OF HIGH COURT OF KERALA

PETITIONER/ACCUSED NO.1:

JOLLYAMMA JOSEPH @ JOLLY,

BY ADVS.
BIJU ANTONY ALOOR
K.P.PRASANTH
T.S.KRISHNENDU
ARCHANA SURESH
VISHNU DILEEP
HIJAS T.T.

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031
- 2 STATION HOUSE OFFICER
KODENCHERY POLICE STATION, KOZHIKODE DISTRICT., PIN -
685531

ADGP SRI.GRACIOUS KURIACKOSE,
SR.P.P.SRI.C.K.SURESH

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
23.01.2024 ALONG WITH Bail Appl.No.4344/2022, THE COURT ON
30.1.2024 PASSED THE FOLLOWING:





IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 30TH DAY OF JANUARY 2024 / 10TH MAGHA, 1945

BAIL APPL. NO. 4344 OF 2022

CRIME NO.333/2019 OF KODANCHERY POLICE STATION, KOZHIKODE
AGAINST THE ORDER IN Bail Appl. 6510/2020 OF HIGH COURT OF
KERALA

PETITIONER/ACCUSED NO.1:

JOLLYAMMA JOSEPH @ JOLLY,
[REDACTED]

BY ADVS.
BIJU ANTONY ALOOR
K.P.PRASANTH
VISHNU DILEEP
T.S.KRISHNENDU
ARCHANA SURESH
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ADGP SRI.GRACIOUS KURIACKOSE,
SR.P.P.SRI.C.K.SURESH

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
23.01.2024, ALONG WITH Bail Appl No.3491/2022, THE COURT ON
30.1.2024 PASSED FOLLOWING:



C.S.DIAS,J

Bail Application Nos.3491 & 4344 of 2022

Dated this the 30th day of January, 2024

COMMON ORDER

The petitioner, who is the first accused in Crime Nos.333/2019 and 334/2019 of the Kodenchery Police Station, Kozhikode, has applied for bail for the second time before this Court under Section 439 of the Code of Criminal Procedure. As the petitioner and the Investigation Officer are the same, the applications were consolidated, jointly heard and are being disposed of by this common order.

2. In B.A No.4344/2022, the petitioner is the first accused in Crime No.333/2019 registered against her and two others for allegedly committing the offences punishable under Sections 110, 120(B), 302, 465, 471, 474 read with 34 of IPC and Section 2 r/w 6(2) of the

Poison Act, 1919 in connection with the alleged murder of the petitioner's former father-in-law Tom Thomas. The essence of the prosecution case in the crime is that the petitioner, after falsifying a will of the deceased, hatched a conspiracy with the accused Nos.2 and 3, and in furtherance of their common intention, around 19.00 hours on 26.8.2008, poisoned Tom Thomas with sodium cyanide concealed in vitamin capsules. On 14.4.2009, when the Investigating Agency had arrested the petitioner in connection with Crime No.189/2011 of the same Police Station, she confessed that she had murdered the deceased. Consequently, the present crime was registered against the accused for allegedly committing the above offences.

3. In B.A No.3491/2022, the petitioner is again the first accused in Crime No.334/2019 registered against her and two others for allegedly committing the offences punishable under Sections 110, 120(B), 302, 465, 471, 474 read with 34 of IPC and Section 2 r/w

6(2) of the Poison Act, 1919 in connection with the alleged murder of her first husband Roy Thomas. The gist of the prosecution case in the above crime is that the petitioner hatched a conspiracy with the accused Nos.2 and 3, and in furtherance of their common intention, around 21.00 hours, on 30.9.2011, the petitioner poisoned her former husband also with sodium cyanide concealed in his food. She convinced everyone that her husband died due to cardiac arrest. However, in the further investigation it was revealed that it was a case of unnatural death. Then, the petitioner confessed to having committed the murder. Thus, the accused have allegedly committed the above offences.

4. The Investigating Officer has filed bail objection reports in both the bail applications, *inter alia*, contending that in addition to the above two crimes, the petitioner is also the accused in Crime Nos.189/2011, 332/2019 and 335/2019 of the Kodenchery Police



Station and Crime No.980/2019 of the Thamarassery Police Station, for allegedly committing similar offences. In all six crimes, the investigation is complete, and the final reports have been laid before the Court of Session, Kozhikode. The cases have been numbered as S.C Nos.763/2020, 496/2020, 760/2020, 762/2020, 761/2020 and 461/2020 and the trial is in progress. The chemical analysis reports reveal that the substance used to poison the deceased is sodium cyanide. The petitioner procured the substance from the 3rd accused, who was working in a jewellery shop, through the 2nd accused. The accused 1 and 2 were maintaining an outside the marriage relationship. The serial murders were pre-mediated and well-executed in a span of twenty years, with the ulterior motive to grab the family house and property of the petitioner's first husband.

When the petitioner was produced before the jurisdictional Magistrate on 13.1.2020, she spoke to her relative Jose Hillarious, a witness, without the court's



permission, to influence the witnesses. Similarly, on 27.2.2020, the petitioner attempted to commit suicide in the District Jail, Kozhikode, by slitting her left wrist. Moreover, the sterling witnesses in the six cases are relatives and friends of the deceased and the petitioner. If the petitioner is released on bail, she is likely to influence and intimidate the witnesses, which would vitiate the prosecution cases. The public has a strong resentment against the petitioner. There are intelligence reports that there is a life threat against the petitioner. This Court, by order dated 15.10.2020 in B.A No.5390/2020 had enlarged the petitioner on bail in Crime No.332/2019. But the Honourable Supreme Court has stayed the release of the petitioner by its order dated 08.02.2021 in SLA (Crl) No.688/2021. As the trial is in progress, releasing the petitioner at this stage would adversely affect the proper determination of the cases. Hence, the bail applications may be dismissed.

5. Heard; Sri. Biju Antony Aloor, the learned counsel appearing for the petitioner and Sri. Gracious Kuriakose, the learned Additional Director General of Prosecution.

6. The learned counsel appearing for the petitioner argued that the petitioner is innocent of the accusations levelled against her. The alleged incidents occurred nearly a decade back. There is no material to connect the petitioner with any of the crimes. The cases are a figment of the Investigating Officer's imagination, that too solely based on suspicion. The petitioner does not have any criminal antecedents. The investigation in the cases is complete, final reports have been laid, and recovery has been effected. Therefore, the petitioner's further detention is unnecessary. As the petitioner is a woman, she is entitled to the benefit of the proviso to Section 437 (1) of the Code of Criminal Procedure ('Code', for short). The prosecution case revolves around the alleged confession of the petitioner, which is

unacceptable in law. Therefore, the petitioner is entitled to the benefit of doubt. The findings in the post-mortem reports are all false and fabricated. The deceased lost their lives due to natural causes. There are no reasonable grounds or materials to believe that the petitioner has committed the offences. The petitioner is willing to abide by any stringent condition that may be imposed by this Court. Hence, the bail applications may be allowed.

7. The learned Additional Director General of Prosecution strenuously opposed the applications. He contended that the petitioner has indulged in the gruesome serial killing of six persons by poisoning them with the evil intention of siphoning her former husband's family property. The post-mortem reports and the chemical analysis reports prove that the deceased were administered with sodium cyanide. The petitioner has been in custody right from the date of her arrest. Although this Court granted bail to the petitioner in one



of the crimes, the Honourable Supreme Court has stayed the order, and the appeal is pending consideration. Final reports have been filed in all six crimes and the trial has commenced. Granting bail to the petitioner, at this stage, would have a deleterious impact on society and would be detrimental to the prosecution, especially since the petitioner had made attempts to influence the witnesses and also commit suicide. There is a public rage against the petitioner for committing the serial murder. Hence, the bail applications may be dismissed.

8. The petitioner is the first accused in the following six crimes:

(i) Crime No.189/2011 of the Kodenchery Police Station, registered against the petitioner and two others for allegedly committing the offences punishable under Sections 110, 120(B), 465, 468, 471, 474, 302 and 201 r/w 34 of the IPC and Section 2 r/w 6(2) of the Poison



Act, 1919, in connection with the murder of Roy Thomas, the petitioner's first husband;

(ii) Crime No.332/2019 of the Kodenchery Police Station registered against the petitioner and two others for allegedly committing the offence punishable under Section 302 IPC and Section 2 r/w 6(2) of the Poison Act, 1919, in connection with the murder of Smt. Annamma Thomas, the petitioner's mother-in-law;

(iii) Crime No.333/2019 of the Kodenchery Police Station registered against the petitioner and two others for allegedly committing the offences punishable under Sections 110, 120(B), 302, 465, 471, 474, read with 34 of IPC and Section 2 r/w 6(2) of the Poison Act, 1919, in connection with the murder of Tom Thomas, the petitioner's father-in-law;

(iv) Crime No.334/2019 of the Kodenchery Police Station registered against the petitioner and two others for allegedly committing the offences punishable under



Sections 110, 120(B), 302, 201 r/w 34 of IPC and Section 2 r/w 6(2) of the Poison Act, 1919, in connection with the murder of Manjadiyil Mathew, the uncle of the petitioner's former husband Roy Thomas;

(v) Crime No.335/2019 of the Kodenchery Police Station registered against the petitioner and two others for allegedly committing the offences punishable under Sections 110, 120(B), 302 r/w 34 of IPC and Section 2 r/w 6(2) of the Poison Act, 1919, in connection with the murder of Alfine Shaju, the daughter of the petitioner's present husband; and

(vi) Crime No.980/2019 of the Thamarassery Police Station registered against the petitioner and two others for allegedly committing the offences punishable under Sections 110, 120(B), 307, 302, 201 r/w 34 of IPC and Section 2 r/w 6(2) of the Poison Act, 1919, in connection with the murder of Sili Shaju, the former wife of the petitioner's present husband.



9. The prosecution case against the petitioner in the six crimes can be summarised as follows:

(a) The petitioner was married to Roy Thomas, the son of Tom Thomas and Annamma Thomas. Tom Thomas was employed in the Educational Department. After his retirement, he started an educational consultancy named 'Divine Educational Consultancy' at Thamarassery. The petitioner had falsely represented to her husband's family that she was a post-graduate in commerce and had worked at the NIT, Kozhikode. So, Annamma Thomas, who had supremacy in the family, compelled the petitioner to take classes at the consultancy. The petitioner feared that her real education qualification would be exposed. She also wanted supremacy in her husband's family — the Ponnammattam family. So, on 22.2.2002, the petitioner served soup to Annamma Thomas mixed with poison and poisoned her to death. However, no one suspected her death because of her old age.



(b) After the death of Annamma Thomas, the petitioner's father-in-law, Tom Thomas, came to learn that the petitioner was maintaining a relationship outside the marriage with the second accused — M.S.Mathew @ Shaji, who was a relative of the late Annamma Thomas. The petitioner fraudulently concocted a Will of Tom Thomas, bequeathing his house and properties in favour of Roy Thomas. Then, on 22.8.2008, the petitioner administered cyanide to Tom Thomas with the assistance of the accused Nos.2 and 3. Again, as Tom Thomas was old, everyone assumed it to be a case of natural death.

(c) Now that Roy Thomas had become the owner of the house and property, the petitioner decided to do away with him also. On 30.9.2011, Roy Thomas, who was found lying unconscious in the toilet, also died. But, his siblings were not willing to accept the story of natural death, and they subjected his body to autopsy. Then, it was revealed that he died due to poisoning. Yet,



the petitioner convinced all concerned that Roy Thomas was suffering from alcoholic depression. Accordingly, the Kodencheri Police closed Crime No.189/2011 as a case of suicide.

(d) Nonetheless, Roy Thomas's maternal uncle, Mecherial Mathew, demanded further investigation into the death of Roy Thomas. Fearing that the truth would be unveiled, the petitioner murdered the Uncle, also adopting the same modus operandi.

(e) By this time, the petitioner had developed a deep intimacy with the second accused, who was married and living with his wife and child. On 3.5.2019, the petitioner poisoned the daughter of the second accused, Alpine, and on 11.1.2016, she poisoned the wife of the second accused, Sili.

(f) After witnessing the string of mysterious deaths, that too all in the same manner, on 20.06.2019, Rojo Thomas, the brother of Roy Thomas, approached the

District Police Chief and demanded further investigation into the crimes. Accordingly, Crime No.189/2011 was re-opened, and the dead bodies were exhumed and subjected to autopsy. It was then learnt that the deaths were all caused due to poisoning. Consequently, the petitioner was arrested on 5.10.2019. She then confessed to having committed the serial murder. Accordingly, the six crimes were registered, the investigation was conducted, the final reports were laid, and now the cases are pending trial.

10. The petitioner had earlier filed B.A Nos.5318/2020 and 6510/2020 before this Court under Section 439 of the Code for regular bail. But this Court dismissed the bail applications by separate orders dated 8.12.2020 and 1.3.2021. Thereafter, the petitioner filed separate applications for bail before the Court of Session, Kozhikode, which were also dismissed by separate orders dated 10.3.2022 in



Crl.M.P.Nos.219/2020 and 220/2022. Consequently, the present bail applications are filed.

11. If the allegation put forth by the prosecution is true, then it is a case of familicide orchestrated by the petitioner in a calculated manner to wipe out members of two families, to grab the family property of the first husband and to live with her second husband. The crimes are pre-mediated, gruesome, cold-blooded and without any contrition.

12. The petitioner has been in judicial custody since 5.10.2019. The investigation is complete in the six cases, final reports have been laid, the cases are committed, and the trial is in progress. Even though this Court ordered the petitioner to be released on bail in one of the cases, the order has been stayed by the Hon'ble Supreme Court. Therefore, now the short question is whether the petitioner is to be enlarged on bail at this stage.

**13. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* [(2010) 14 SCC 496], the Honourable**

Supreme Court has laid down the broad parameters for Courts while dealing with bail applications by holding as follows:

“9.xxx xxx xxx However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail”.



14. Similarly, in **Kalyan Chandra Sarkar v. Rajesh Ranjan**, [(2004) 7 SCC 528], the Honourable Supreme Court observed thus:

“11. The law regarding grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for *prima facie* concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) *Prima facie* satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh* [(2002) 3 SCC 598] and *uran v. Rambilas* [(2001) 6 SCC 338].)

15. In **Neeru Yadav v. State of U.P and another** [(2016) 15 SCC 422], the Hon'ble Supreme Court has held as under:

“13. We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an

individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus: "Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters [Alfred Howard, *The Beauties of Burke* (T. Davison, London) 109]."

14. E. Barrett Prettyman, a retired Chief Judge of US Court of Appeals had to state thus: "In an ordered society of mankind there is no such thing as unrestricted liberty, either of nations or of individuals. Liberty itself is the product of restraints; it is inherently a composite of restraints; it dies when restraints are withdrawn. Freedom, I say, is not an absence of restraints; it is a composite of restraints. There is no liberty without order. There is no order without systematised restraint. Restraints are the substance without which liberty does not exist. They are the essence of liberty. The great problem of the democratic process is not to strip men of restraints merely because they are restraints. The great problem is to design a system of restraints which will nurture the maximum development of man's capabilities, not in a massive globe of faceless animations but as a perfect realisation, of each separate human mind, soul and body; not in mute, motionless meditation but in flashing, thrashing activity. [Speech at Law Day Observances (Pentagon, 1962) as quoted in *Case and Comment*, Mar - Apr 1963]"

15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High





Court is the doctrine of parity. A history - sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.

16. In this regard, we may profitably reproduce a few significant lines from Benjamin Disraeli: "I repeat..... that all power is a trust - that we are accountable for its exercise - that, from the people and for the people, all springs, and all must exist."

17. That apart, it has to be remembered that justice in its conceptual eventuality and connotative expanse engulfs the magnanimity of the sun, the sternness of mountain, the complexity of creation, the simplicity and humility of a saint and the austerity of a Spartan, but it always remains wedded to rule of law absolutely unshaken, unterrified, unperturbed and loyal."

16. The law has thus crystallised that while deciding an application for bail under Section 439, the courts are obliged to look into the nature, gravity and seriousness of the crime, the potential severity of the punishment that is likely to be imposed, the character, behaviour and standing of the accused, the prosecution's legitimate apprehension regarding the tampering of evidence, the flight risk that is involved



and whether releasing the accused on bail would have a deleterious impact on the society.

17. On a consideration of the materials placed on record, the rival submissions made across the bar, the law on the point, especially on evaluating the nature, gravity and seriousness of the offences alleged against the petitioner — including the allegation of familicide of six persons — the petitioner's criminal antecedents, the petitioner's attempt to influence the witnesses, that the trial in the cases has commenced, the petitioner's foiled attempt to commit suicide while in judicial custody, the intelligence reports regarding public outrage and potential revolt against the petitioner, the deleterious impact the petitioner's release would have on the society and that the Honourable Supreme Court has stayed the bail order passed by this Court in one of the cases, I am convinced that the petitioner is not entitled to be released on bail because there is a danger of justice being thwarted. Based on the above



considerations, I hold that the applications are meritless and are only liable to be dismissed. Nevertheless, it is made clear that the observations made in this order are only for the purpose of considering the applications. The Court of Session shall decide the cases on their merits, untrammelled by any observations in this common order.

Resultantly, the bail applications are dismissed.

Sd/- **C.S.DIAS, JUDGE**

ma/26.01.2024

APPENDIX OF BAIL APPL. 3491/2022

PETITIONER ANNEXURES

Annexure 1 CERTIFIED COPY OF ORDER IN C.R.L.M.P.
NO.219/2022 DATED ON 10.03.2022
BEFORE THE HON'BLE DISTRICT AND
SESSIONS COURT AT KOZHIKODE

Annexure2 COPY OF EARLIER BAIL ORDER IN B.A
NO. 5318/2020 DATED ON 08/12/2020



APPENDIX OF BAIL APPL. 4344/2022

PETITIONER ANNEXURES

Annexure1 ORDER IN CRL.M.P NO.220/2022 FILED
BEFORE THE HON'BLE DISTRICT AND
SESSIONS COURT KOZHIKODU AND THE
SAME WAS DISMISSED ON 10/03/2022

Annexure2 EARLIER HIGH COURT BAIL ORDER
U/VIDE NO. 6510/2020 THE SAME WAS
DISMISSED ON 01/03/2020