

IN THE COURT OF SESSIONS, THALASSERY DIVISION

Present: Sri. Philip Thomas, Special Judge for the trial of offences
against women and children/ Addl. Sessions Judge-I

Monday the 07th day of April, 2025/ 17th Chaithra, 1947.

Crl.M.P.No.1472/2025 IN SC.No.392/2023

(Crime No.896/2022 of Thalassery Police Station)

Petitioner/Accused No.1:-

Suresh Babu.P @ Parai Babu, aged 49 years, S/o.Nanu,
Velladathu Meethal House, Near Chirakkakaavu,
Illikkunnu, Nittoor, Thalassery, Kannur District,
Dharmadom, Kannur.

Vs.

Respondent/Complainant:-

State: SHO, Thalassery Police Station,
Rep. by Spl.Public Prosecutor, Thalassery.

This petition filed u/s.483 of BNSS for bail condition.

This petition coming on the 02nd ay of April, 2025 for hearing before me in the presence of S/Sri. P R Vibhu and Pradeep Kumar K, Advocates for the petitioner and the Adv.K.Viswan, the Special Public Prosecutor for the State and having stood over for consideration till this day; the Court passed the following:-

ORDER

This is an application filed u/s.483 BNSS by the first accused.

2. The petitioner/A1 stands charge sheeted for the offence punishable u/ss. 120B, 143, 147, 148, 294(b), 506(ii), 341, 323, 324, 307, 302 and 212 r/w 149 IPC.

3. The Prosecution case is that the petitioner and the second accused, engaged in trafficking narcotic drugs and other intoxicants, believed that the residents of Chirammal and Illikkunnu were providing information to the Police and the Excise about their illicit activities. In response, they allegedly conspired with other accused persons to eliminate certain residents of these localities. As part of this conspiracy, on 23 November 2022, at 4 PM, the petitioner and his accomplices murdered two individuals by stabbing them with a knife and attempted to murder CW1 by stabbing on his chest. This occurred after luring the victims outside the compound of the Cooperative Hospital, Thalassery, under the pretext of a compromise discussion. The incident happened when CW2 arrived at the hospital with the deceased, seeking treatment for the injuries he had sustained earlier in an attack by A2 at Chirammal. Consequently, the accused are said to have committed the aforementioned offences.

4. On the filing of the application, a report was called for from the SHO Thalassery Police Station. The SHO objected to the bail application on the ground that there was ample materials to prove the involvement of the petitioner in the commission of the heinous offence and that if the petitioner is released on bail there is every chance of repetition of the crime. He also reported that the petitioner/1st accused was accused in the following cases.

- 1) Dharmadam Police Station Cr. No. 241/2004 Ss.448, 427, 323, 506 r/w s. 34 IPC
- 2) Dharmadam Police Station Cr. No. 210/2004 Ss. 341, 324, 326, r/W34 IPC
- 3) Dharmadam Police Station Cr. No. 21/2006 S 366(A) IPC
- 4) Dharmadam Police Station Cr. No. 242/2004. Ss.143, 147, 148, 448, 341, 324, 308, 120(B), r/w 148
- 5) Dharmadam Police Station Cr. No. 93/2009 S.160 IPC

- 6) Dharmadam Police Station Cr. No.966/2015 Ss.427, 323, 448, 506(1) r/w s. 34 IPC
- 7) Dharmadam Police Station Cr.No.406/2016 u/ss.143, 145, 147, 153 r/w 149 IPC
- 8) Dharmadam Police Station Cr. No. 347/2010 Ss.341, 323, r/w 34 IPC
- 9) Dharmadam Police Station Cr. No.43/2005 Ss. 341, 323, 506, r/w 34 IPC

5. Heard both sides.

6. The petitioner was arrested on 23.11.2022 and since then he is in judicial custody.

7. The counsel for the petitioner submitted that the petitioner is in judicial custody ever since his arrest. He further submitted that the petitioner filed bail application before the Hon'ble High Court of Kerala as Bail Application No.7968/2024 and the same was dismissed on 03/10/2024 with a clarification that it shall be open for the petitioner to approach the trial court for bail, if the trial of the case is not taking place within a reasonable time. The trial of the case was scheduled from 27/01/2025 to 20/02/2025 for the examination of prosecution witnesses. In the meanwhile, it was realised that the second accused in this case has lodged a complaint before the Judl. First Class Magistrate Court, Thalassery, and on the basis of that complaint another crime was also registered by Thalassery Police as Crime No. 233/2023. These two cases are emerging out of the same transaction. But the investigation in Crime No. 233/2023 has not been completed. In that situation the present petitioner preferred an application for postponement of the trial under section 346 read with 253 of BNSS on the ground that both these cases has to be tried by the same court, and disposed of on the same day in the light of the decisions rendered by the Apex Court and the same

was allowed by the Court. At present there is absolutely no possibility for the commencement of trial in this case within a reasonable time. The petitioner is absolutely innocent of the allegations levelled against him. From the plain reading of the available materials on record it is very much clear that the present petitioner was not having any intention to commit the murder of Shameer and Khalid. In a sudden and free fight they sustained injuries which resulted in their death. The petitioner is under custody for the last 2 years, 3 months and 18 days. The petitioner approached the Honourable Supreme Court and the said petition was withdrawn with liberty to file bail application before the Hon'ble High Court, if the trial got delayed. The petitioner was previously involved in 9 cases, of them in 7 cases, he was acquitted. It is also stated that the petitioner is the sole breadwinner of his family. He also stated that he was ready to abide by any condition imposed by this Court. From the perusal of the available materials on records and the CCTV visuals produced from the side of the Prosecution, it is possible to hold a view that the petitioner is not guilty of the offences alleged. It was also submitted that no notice on the final report (refer charge) on the complaint filed by the second accused in this case against 9 persons had been served upon him. On the basis of the decisions reported in *Akash S D v. State of Kerala (2024 KHC 434)* the learned counsel contended that bail is the rule and committal of jail an exemption and that once a final report is filed, a strong case has to be made out for continuing a person in judicial custody. Hence, it is prayed that the petitioner may be enlarged on bail.

8. On the other hand, the learned Special Public Prosecutor argued that the petitioner had criminal antecedents and, if released on bail, it is likely that he would commit similar offences and engage in drug trafficking. He further stated that the petitioner might intimidate or influence the

witnesses and abscond from the locality. It was also submitted that the investigation in the case filed by one of the accused against certain witnesses had been completed, and a refer report had been submitted to the Judicial First Class Magistrate Court, Thalassery. A notice on the refer charge had been issued to the defacto complainant in that case and he had received the same; however, no protest complaint has been filed by the complainant so far. Therefore, the Special Public Prosecutor pleaded for the dismissal of the petition.

9. Additionally, the Special Public Prosecutor presented video footage of the events to aid in understanding the actual incidents of the case. As requested by both parties, the video footage was viewed in open court.

10. On the basis of the video footage the Special Public Prosecutor submitted that from the visuals it is crystal clear that the petitioner had committed the murder of two persons and he came there with the intention of committing murder which is evident from his conduct that he came with a knife concealed in his auto rickshaw, and as soon as some scuffle took place, he went to the auto rickshaw and took out the knife and stabbed two persons at the first instance, and one of them died and the other was seriously injured. Thereafter, he came back to the place of occurrence and stabbed the second deceased on his neck with the knife. These actions of the petitioner would show that he came at the place of occurrence with the specific intention of doing away with his opponents.

11. On the other hand the counsel for the petitioner submitted that the visuals in the video footage would show that the incident happened out of a sudden provocation and also as a result of sudden fight, and in that circumstance even if it was proved that it was the petitioner who inflicted the

fatal injuries to both the deceased persons, the offence he committed would not amount to murder but only culpable homicide not amounting to murder.

12. On viewing the scenes in the video footage, it is seen that the petitioner came with a knife in his auto rickshaw and that during the scuffle three persons had sustained injury from his knife including the two deceased persons. It is further seen that CW1 sustained stab injury first, and he left the place and the first accused again inflicted a stab injury on the abdomen of Shameer who succumbed to that injury. Thereafter, there occurred some attacks on each other and one of the persons from the group consisted of the deceased persons, threw a concrete rag on the head of A2 and caused hurt to him. Seeing this, the petitioner first followed the person who inflicted the hurt to A2. Thereafter, he returned to the side of the auto rickshaw and indiscriminately attacked the second deceased person without any provocation from him and inflicted a stab injury on his neck. Notably, the second deceased appears to have been just simply standing near the auto rickshaw when the petitioner attacked him. Earlier in the footage, during the altercation, the second deceased was seen attempting to restrain a member of his group from attacking the petitioner's group. This sequence of events is clearly visible in the video footage between 04:06:54 PM and 04:07:37 PM. According to the counsel of the petitioner, it was the second deceased who had exhorted others in his group to kill the members of the petitioner's group, which purportedly led to the petitioner stabbing him. However, prima facie, this claim does not appear to be correct. It is unlikely that a person who incites members of his group to kill the opposing group would, at the same time, attempt to pacify his own group and forcibly restrain one of its members from attacking the opposing group.

13. On viewing and analysing the scenes, the first and second infliction of stab injury to CW1 and to the first deceased, one can justify that it was out of a sudden provocation and sudden fight. But, from the conduct of the petitioner in inflicting a fatal stab injury on the neck of the second deceased, one can not in no way justify the action of the petitioner on the ground that it was also as a result of sudden provocation. Also, from the available materials before this court, there is nothing to find that as the second deceased exhorted others to kill the members of the group consisted of the petitioner. In that circumstance, the contention of the counsel for the petitioner that even if the petitioner had done any crime, it is only culpable homicide not amounting to murder and considering that aspect, the petitioner is entitled for bail is not sustainable.

14. The Apex Court in **P Chidambaram v. Directorate of enforcement (AIR 2020 SC 1699)** has stated the principles to be followed by Courts while exercising the jurisdiction of granting regular bail, having regard to the facts of each case. The following factors are to be taken into consideration while considering an application for bail: - (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations.

15. On an analysis of the materials in the case, on the basis of the above principles enunciated by the Apex Court, it is to be found that the petitioner is not entitled for bail because the offence alleged to have been committed by the petitioner is a heinous one and it is seen that there are

strong materials against the petitioner including the CCTV footages to prove the involvement of the accused in the crime as well as the overt acts committed by him, even though final report had been filed in the case. Moreover, as pointed out by the Spl. Public Prosecutor that if the petitioner is granted bail and released, he would again get involved in such activities and his release would be a threat to the life of the witnesses in the case. Also, the possibility of absconding by the accused cannot be ruled out. Considering all these aspects, I am not inclined to grant bail to the petitioner/accused No.1. Hence, the bail application is dismissed.

In the result, the petition is dismissed.

(Dictated to my Confidential Assistant, typed by her, corrected and pronounced by me in open Court, on this the 7th day of April, 2025).

Sd/
ADDL. SESSIONS JUDGE-I

Copy to:-

The Petitioner.

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