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Ramesh B Vs. State of Kerala

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Court : Kerala

Decided On : Oct-30-2013

Judge : Honourable Mr.Justice Thomas P.Joseph

Appellant : Ramesh B

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOMAS P.JOSEPH WEDNESDAY, THE30H DAY OF OCTOBER20138TH KARTHIKA, 1935 Bail Appl..No. 7088 of 2013 () ------------------------------ CRIME NO. 103/2011 OF KOIPURAM POLICE STATION, PATHANAMTHITTA DISTRICT- CBCID, EOW, KOTTAYAM PETITIONER/2ND ACCUSED: ----------------------- RAMESH.B., AGED51YEARS S/O.BAHULEYAN, 'PUNARJANI' MAVUNNAYIL HOUSE, PALLIPPADU MURI, THRIKKUNNAPPUZHA BY ADVS.SRI.GILBERT GEORGE CORREYA SRI.ALAN PAPALI SRI.J.VIMAL RESPONDENT/COMPLAINANT: -------------------------- STATE OF KERALA (DEPUTY SUPERINTENDENT OF POLICE, CBCID, EOW KOTTAYAM -CRIME NO.103/2011 OF KOIPURAM POLICE STATION) REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, KOCHI682031. BY PUBLIC PROSECUTOR SRI.SREEJITH THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON3010-2013, ALONG WITH Bail Appl..No. 7089 of 2013 THE COURT ON THE SAME DAY PASSED THE FOLLOWING: MNS THOMAS P.JOSEPH, J.

======================== Bail Application Nos 7088 & 7089 of 2013 ============================ Dated this the 30th day of October, 2013

ORDER

Petitioner is accused, in Crime No.103 of 2011 and 73 of 2011, respectively of the Koipuram police station. In Crime No. 73 of 2011, the offences attributed are under Secs. 420, 468 and 120B r/w. Sec. 34 of the Penal Code and Secs. 3 and 4 of the Prize Chits and Money Circulation Schemes Banning Act.

1978. In Crime No. 103 of 2011, apart from the IPC offences as aforesaid, the offences under Sec. 66 of the I.T. Act and 4, 5 and 6 of Prize Chits and Money Circulation Schemes Banning Act. 1978 are attributed.

2. The allegation in short is that petitioner and others, acting in the name and style 'E Capital Funds Private Limited' cheated the depositors after collecting about 7.5 B.A No. 7088 & 7089 of 2013 2 lakhs each from them.

3. Learned Public Prosecutor has submitted that there are several complaints against the petitioner and others and in Pathanamthitta Circle three cases were registered. It is also submitted that in Annexure -1, Order dated 25.11.2011 in B.A. No. 5069 of 2011 (produced in B.A. No. 7089 of 2013) this court while granting anticipatory bail to the petitioner and another in Crime No. 73 of 2011 had directed production of bank guarantee to the tune of Rs.8,06,250/- for a period of two years. It is submitted that in case this court has inclined to grant bail, the interest of the depositors may also be protected by directing the petitioner to deposit the amount involved (and allegedly cheated).

4. Learned counsel submits that petitioner is in custody since 28.02.2013 and that the final report is not sofar filed. Hence the petitioner is entitled to get statutory B.A No. 7088 & 7089 of 2013 3 bail under Sec. 167(2) of the Penal Code. Learned counsel has also invited my attention to the decision in Sandeep Jain V. National Capital Territory of Delhi ((2000) 2 SCC66 to contend that it is not proper to impose conditions which are not workable and which would stand in the way of accused being set at liberty when he is otherwise entitled to set at liberty. Even in

the case of statutory bail under Sec. 167 of the Penal Code, it is within the power of the court to impose conditions while granting bail. Sec.439 (1) (a) r/w Sec. 437(3) of the Code also empowers this court to impose appropriate conditions which this court finds is necessary in the ends of justice.

5. True that the Supreme Court in Sandeep Jain V. National Capital Territory of Delhi (supra) has pointed out of course from the facts of that case that the direction to deposit Rs.2 lakhs was not proper, being onerous. But, B.A No. 7088 & 7089 of 2013 4 there is no direction that while granting bail, such conditions should not be imposed. I must also notice the decision in 2013(4) KHC S.N. 13 where it is pointed out that the imposition of such conditions is not impermissible though it shall not be onerous.

6. When confronted with the submission made on behalf of the petitioner as well while disposing of B.A. No. 5069 of 2011 that the petitioners therein (who include the petitioner herein) are prepared to furnish bank guarantee for a sum of Rs.8,06,250/-, the learned counsel submits that since the petitioner herein was not able to comply with that order on account of inability to raise that amount he could not enjoy the anticipatory bail granted and subsequently he was arrested.

7. As per the version of the prosecution, petitioner is also associated with the 'E Capital Funds Private Limited', B.A No. 7088 & 7089 of 2013 5 one way or other and he was also a party to the cheating and defrauding the depositors, the amount running into a few lakhs. While granting bail to the petitioner, I cannot forget the interest of the depositors as well. I am inclined to think that petitioner has to be directed to deposit a sum of Rs.2 lakhs each as a condition for the grant of bail. Also other conditions are to be imposed to ensure that such incidents should not recurring in future and investigation of the case is not complete. Resultantly, this application is allowed as under:- Petitioner is granted bail in Crime No. 73 of 2011 and 103 of 2011 of the Koipuram police station and will be released, if not required to be detained otherwise on his executing bond for Rs. 25,000/- (Rupees Twenty five thousand only) with two sureties for the like sum each to the satisfaction of the learned B.A No. 7088 & 7089 of 2013 6 magistrate and subject to the following conditions: a) One of the sureties shall be a close relative of the petitioner. b)

Petitioner shall deposit Rs.2,00,000/- (Rupees Two lakhs only) each in his name in a nationalised bank for a period of two years (renewable as per the order of the learned magistrate) and produce FD receipt before the learned magistrate while executing bail bond within two months from the date of execution of the bail bond. c) In case the cases are decided against the petitioner and he is liable to pay compensation, it is open to the de facto complainant to realise such compensation from the amount in deposit. d) Petitioner shall report to the officer investigating Crime Nos.73 of 2011 and 103 of 2011 of the B.A No. 7088 & 7089 of 2013 7 Koipuram police station on every Saturday between 10:00 p.m. and 12:00 p.m. until filing of the final report. e) Petitioner shall not during the said period get involved in any other similar offences. f) It is made clear that in case any of the above conditions is violated, it is open to the Investigating Officer to seek cancellation of the bail granted hereby by moving appropriate application before the learned Magistrate as held in P.K. Shaji V. State of Kerala (AIR2006 Supreme Court 100). THOMAS P.JOSEPH, JUDGE smv

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