

**Jancy Benny Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Jun-18-2014

**Judge :** Honourable Mr.Justice K.M.Joseph

**Appellant :** Jancy Benny

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID WEDNESDAY, THE 18TH DAY OF JUNE 2014 28TH JYAISHTA, 1936 Bail Appl..No. 4066 of 2014 ----- CRIME NO. 866/2014 OF THIRUVALLA POLICE STATION , PATHANAMTHITTA .... PETITIONERS/ACCUSED: ----- 1. JANCY BENNY, AGED 45 YEARS, W/O. BENNY VADAKKUMURIYIL, VALLAMKULAM VILLAGE, ERAVIPEROOR P.O., THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT.

2. BENNY CHACKO, AGED 48 YEARS, S/O. CHACKO, VADAKKUMURIYIL, VALLAMKULAM VILLAGE, ERAVIPEROOR P.O., THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT. BY ADVS. SRI. BECHU KURIAN THOMAS SMT. TINA ALEX THOMAS RESPONDENTS/COMPLAINANT: ----- STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERANAKULAM, (THROUGH SUB INSPECTOR OF POLICE, THIRUVALLA POLICE STATION,

PATHANAMTHITTA DISTRICT). BY PUBLIC PROSECUTOR SRI.GITHESH.R. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 1806-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Kss P.UBAID, J.

~~~~~ B.A No.4066 of 2014 ~~~~~ Dated this the 18th June, 2014

## ORDER

The petitioners herein are wife and husband. They seek pre-arrest bail under Section 438 Cr.P.C on the apprehension of arrest as accused in Crime No.866 of 2014 of Thiruvalla Police Station, registered under Section 420 of Indian Penal Code. The crime was registered on the complaint of one Raju.A Thomas.

2. The prosecution case is that with some dishonest intention to appropriate money somehow, the petitioners received an amount of 7.5 lakhs from the complainant and others under a false promise that the petitioners would arrange VISA for Nursing job in Georgia, but later they failed to arrange VISA as offered, and thus cheated the complainant and others.

3. As required by the Court, the learned Public Prosecutor produced the case diary along with report of the Investigating Officer, and he opposed the bail application. B.A No.4066 of 2014 2 4. On hearing both sides and on a perusal of the case diary, I find that the petitioners will have to be interrogated by the Police to detect the truth of the allegations made in the complaint. Of course, it is true that the petitioners had admittedly returned some amount. Still some more amount is due from them, and the complainant probably brought complaint when the petitioners failed to return the balance amount. In such a situation, it will have to be examined whether this is a case of cheating, or whether the petitioners had in fact any dishonest intention when they made promise and received the amount. It requires to be examined by the Court whether the alleged transaction is more of a civil nature. Anyway, let those aspects be considered by the learned Magistrate, having jurisdiction when application is filed for bail under Section 437 Cr.P.C. After necessary interrogation, the petitioners will have to be produced before the learned Magistrate, and the question of bail will have to be considered by the learned Magistrate. The aspects discussed above will have to be considered in the

matter of bail. B.A No.4066 of 2014 3 In the result, this bail application is closed with direction to the petitioners to surrender before the Investigating Officer within seven days from this date for necessary interrogation. After interrogation, the petitioners shall be produced before the learned Magistrate having jurisdiction, by the Investigating Officer, on the same day. If application is filed under Section 437 of Cr.P.C, it shall be judiciously considered and decided on the same day by the learned Magistrate, and in the decision making process, the aspects pointed out above will have to be considered by the learned Magistrate. Sd/- P.UBAID JUDGE  
ma /True copy/ P.S to Judge

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