

Sivaprasad Vs. State of Kerala

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Court : Kerala

Decided On : Oct-17-2014

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Sivaprasad

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS FRIDAY, THE 17TH DAY OF OCTOBER 2014 25TH ASWINA, 1936 Bail Appl..No. 7558 of 2014 ()
----- CRIME NO. 1967/2014 OF ADOOR POLICE STATION , PATHANAMTITTA PETITIONER(S)/ACCUSED NO.2: ----- SIVAPRASAD, AGED 46 YEARS S/O.DAMODHARAN, SHEKHARA SADANAM, PUTHENCHANDA PONGADI MURI, PERINGANADU VILLAGE PATHANAMTHITTA DISTRICT. BY ADVS.SRI.K.SHAJ SRI.SAJJU.S SRI.RENJIT GEORGE SMT.ANJU MOHAN SRI.S.K.SUJITH KRISHNA SRI.S.VISHNU (ARIKKATTIL) RESPONDENT(S)/STATE: ----- 1. STATE OF KERALA REPRESENTED BY ITS PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM-31.

2. SUB INSPECTOR OF POLICE, ADOOR POLICE STATION, ADOOR PATHANAMTHITTA DISTRICT-689641. R BY PUBLIC PROSECUTOR, SRI. C.

RASHEED THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17.10.2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
as ALEXANDER THOMAS, J.

----- B.A. No. 7558 of 2014
----- Dated this the 17th day of October, 2014

ORDER

The petitioner is the 2nd accused in Crime No.1967/2014 of Adoor Police Station for the offences under section 420 of Indian Penal Code and sections 13 and 17 of the Money Lenders Act.

2. The gist of the prosecution is that accused nos.1 and 2, in furtherance of their common intention, cheated the defacto complainant and to make unlawful gain for themselves obtained the document pertaining to her property as security and advanced an amount of Rs.20,000/- to her at a monthly interest of Rs.2,000/- in January, 2011, and that though the defacto complainant paid the entire amount and interest but the accused persons did not return the document and thereby committed the offences as alleged.

3. It is the case of the petitioner that he is falsely implicated in the aforementioned crime and that he is conducting a flour mill and a small textile shop and the 1st accused in this B.A. No. 7558 of 2014 -2- crime was working in this flour mill and that it appears that the accused no.1, who was the petitioner's employee, had some dealings with the defacto complainant and that crime has been registered due to some dispute between the defacto complainant and accused no.1 and that the defacto complainant had previous enmity with the petitioner his wife, Sindhu. It is further submitted that the house of the petitioner was searched by the Police authorities and no incriminating material was found from his house and the petitioner was arrested and remanded to judicial custody on 1.10.2014 and that investigation is completed and there is no further necessity to justify his custodial detention.

4. Sri.K.Shaj, learned counsel for the petitioner, would further urge that the Police authorities and the Magistrate concerned has not acted in compliance with the directions laid down by the apex Court in Arnesh Kumar v. State of Bihar and another, reported in 2014 (3) KLT143 while seeking remand of the petitioner at the time of his remand. That there are no grounds cited in the remand report by the Investigating B.A. No. 7558 of 2014 -3- Officer for seeking remand of the accused and that the learned Magistrate has not given any specific reason warranting the remand of the accused etc and he would invite the attention of this Court to Annexure A1 remand report dated 1.10.2014.

5. The learned Public Prosecutor would submit that the investigation has been conducted fairly and properly in the petitioner is involved in the aforementioned crime and that the remand report, Annexure A1, would clearly state that all the requisite conditions, required for the purpose of arrest and remand of the accused, has been complied. The prosecution would also submit that the house of the petitioner was searched and no incriminating materials could be recovered and that the investigation is almost complete.

6. After having considered the submissions of Sri.K.Shaj, learned counsel for the petitioner, and the learned Public Prosecutor appearing for the prosecution and evaluating the overall factual matrix in this case, I am inclined to grant regular bail in this case subject to conditions. The search of the premises of the petitioner has been conducted and no incriminating B.A. No. 7558 of 2014 -4- materials have been seized therefrom as pointed out by the Prosecution. Considering the nature of the offences, the allegations in the aforementioned crime and taking into account the fact that search process is already over, bail can be granted to the petitioner.

7. Accordingly, I am inclined to allow the prayer of the petitioner for regular bail subject to strict safeguards and it is ordered that the petitioner herein shall be released on bail on his executing a bond for Rs.35,000/- (Rupees Thirty Five thousand only) with two solvent sureties each for the like amount to the satisfaction of the court below concerned and subject to the following conditions: i. The petitioner shall surrender his passport, if any, before the court below

concerned at the time of executing the bail bond and if he is not a passport holder, then he will file an affidavit to that effect in the said court. If the petitioner requires his passport for travel abroad, he is at liberty to approach the local court concerned for the release of the same and for necessary permission in that regard. In case such an application is filed, the trial court or the jurisdictional Magistrate, as the case may be, is at liberty to consider the same on merits and pass B.A. No. 7558 of 2014 -5- appropriate orders thereon, taking sufficient guidance from the principles laid down by this Court in the case Asok Kumar v. State of Kerala reported in 2009 (2) KLT712 notwithstanding the above said conditions imposed by this Court. ii. The petitioner shall report before the Investigating Officer in Crime No. 1967 of 2014 of Adoor Police Station as and when required by him. iii. The petitioner shall not interfere with the investigation in any manner. iv. The petitioner shall not influence the witnesses or shall not tamper or attempt to tamper the evidence in any manner whatsoever. v. The petitioner shall fully co-operate with the investigation. If the petitioner violates any of the conditions as ordered above, then the bail granted to him is liable to be cancelled. In terms of the above said directions, this Bail Application stands finally disposed of. Sd/- ALEXANDER THOMAS JUDGE //True Copy// P.A. To Judge jjj

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