

A.C. Jayaram Vs. State of Karnataka, Mangalore North Police Station, Mangalore Represented by State Public Prosecutor

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Court : Karnataka

Decided On : Aug-26-2014

Judge : R.B. Budihal

Appeal No. : Criminal Petition No. 4815 of 2014

Appellant : A.C. Jayaram

Respondent : State of Karnataka, Mangalore North Police Station, Mangalore Represented by State Public Prosecutor

Judgement :

(Prayer: This criminal petition is filed under Section 438 of the Cr.P.C. praying to enlarge the petitioner on bail in the event of his arrest in Cr. No.143/2014 of Mangalore North P.S., Mangalore City, for the offences punishable under Sections 409, 419, 420, 465, 466, 467, 468, 471, 472 read with Section 34 of IPC.)

1. This petition is filed by the petitioner-accused No.1 under Section 438 of Cr.P.C. seeking anticipatory bail to direct the respondent police to release him on bail in the event of his arrest for the offences punishable under Sections 409, 419, 420, 465, 466 467, 468, 471 and 472 read with section 34 IPC registered in respondent Police Station Crime No.143/2014.

2. I have heard the learned Senior Counsel appearing for the petitioner-accused No.1 and the learned High Court Government Pleader appearing for the respondent-State.

3. Learned Senior Counsel appearing for the petitioner, during the course of the arguments, submitted that the petitioner is totally innocent and he is unconnected with the alleged offence. He has submitted that the bank employees including the Manager and the claimants in collusion with each other might have created false and forged documents and the petitioner herein has no role in the alleged offence. He has also made the submission that the petitioner is a practicing Advocate who has practiced for a long period of 30 years as a member of the Bar in the Mangalore District and he is having unblemished records. The petitioner has been involved in the case for the reason that he has appeared for the claimants in MVC cases in respect of whose cases it is alleged that the false documents are created. The learned Senior Counsel also made the submission that though the alleged offence under Section 467 and 468 of IPC is punishable with life imprisonment, but all the offences are triable by the Magistrate Court. He further submitted that before arresting the accused, the respondent police have to follow the procedure as laid down under Section 41-A of Cr.P.C. which is not done in this case. The petitioner is ready to abide by any condition to be imposed by this Court and ready to co-operate with the investigating officer. He made the submission that all the alleged documents are already seized by the police and therefore, custodial interrogation of the petitioner is not at all required. The petitioner will be put to hardship and injury if he is not granted with anticipatory bail. In support of his case, the learned Senior Counsel has relied on the following decisions:

1. (2014) 2 SCC (Cri.) 363 - Hema Mishra Vs. State of Uttar Pradesh and others

2. The Order dated 4.7.2006 in Cri.P.

No.2753/2006 - T.P. Srinivasa and another Vs. The State of Karnataka

4. As against this, learned High Court Government Pleader appearing for the respondent State, during the course of the arguments, submitted that the offences alleged are serious in nature. There is an allegation that the petitioner with his

office staff has created false and fabricated documents and forged the signatures of Presiding Officers of the Court. There is also an allegation that by creating false seal of the Court, the petitioner has addressed letters to the Bank Manager as if the letters are dispatched from the Court to withdraw the money and thereby, committed fraud and cheating. The learned HCGP made submission that from the date of incident, the petitioner is absconding. The investigating officer has to interrogate the petitioner to recover the created false seals and also the documents, which are forged and fabricated. If anticipatory bail is granted, the further investigation becomes empty formality. He has also submitted that the investigating officer has recorded the statement of the claimants in MVC cases, who have consistently stated before the investigating officer that it is the petitioner along with his office staff has created the documents and withdrew the claim amount. Hence, he submitted that petitioner is not entitled to be granted with anticipatory bail.

5. I have perused the averments made in the bail petition, FIR and the complaint. I have also perused the copy of the order passed by the lower court on the bail application and also CD file produced by the learned HCGP containing investigation materials.

6. The complaint averments in brief go to show that recently, the Manager, Dena Bank, Kankanadi Branch, Mangalore, had come to the District Court office for cross verification of some letters appear to have been received from the District Court office in respect of premature closure of certain fixed deposit amount. The Manager has also told that he was under suspicion as the Bank received similar letters from the Court very often for premature closure by intimating that the FD receipt in the custody of the Court is lost. After verifying such letters brought by him, it was found that the said letters contained dispatch numbers, date and signatures of the Presiding Officers of the District Court. The seal put on such letters contained official mark as "Motor Accident Claims Tribunal, Mangalore". However, the District Court Office never used such seal. On further verification, it was found that the dispatch numbers and written letters did not pertain to District Court Office and such letters were never dispatched from the said office. On comparison of the signatures found on the letters said to have been put by Sri.

B.V. Prakash and Sri. Choudapurkar Arun who were working as Principal District And Sessions Judge in the said Unit and the signatures of the said Presiding Officers found on the records of the Court, it was found on the face of it that the said signatures were forged. It was noticed that in some cases, even after transfer of the Presiding Officers from the said Court, letters purported to be signed by them have been produced before the Bank for premature withdrawal of money by closure of fixed deposit. On further verification of the records, it was found that the fixed deposit receipts said to have been lost in the custody of the Court are intact and they are still in the custody of the said Court.

7. Regarding the contention of the learned Senior counsel appearing for the petitioner that the petitioner is totally innocent and unconnected with the present case and the further submission that the bank employees including the Manager and the claimants might have created the documents is concerned, let me refer to the averments made in the complaint at para No.2 on page No.3 of the complaint, it is mentioned as under:

" The Manager of Dena Bank, Kankanady Branch has also brought to the notice of this office that he has received such court orders through Sri. A.C Jayaraj, Advocate of Mangalore for premature closure of accounts of various customers wherein it was informed that the fixed deposit receipts in custody of court have been lost."

8. But, it is the case of the prosecution that the original FD receipts are intact and are in the custody of the court, which is ascertained during investigation. This prima facie goes to show that it is falsely mentioned in the intimations addressed to the Manager of the Dena Bank as if the intimations that the original fixed deposit receipts were lost, were from the court itself. The allegations go to show that such intimation letters were given to the Bank Manager by the present petitioner seeking premature closure of the fixed deposit receipts.

9. I have perused the statement of witnesses, who are the claimants, namely, Shariff Saheb, Smt. Yashodara, Smt. Basavva, Purushotham Poojari, Adam Pinja, K.V. Gopal Chetti, Neelappa, Suresh so also I have perused the statement of Sri. Prakash Naik, Siresthedar of the District Court and Smt. Jyothi S.D.A working in

the said Court. The materials go to show that the amount has been withdrawn by the present petitioner with the help of his office assistant Smt Sahana who took claimants to the Bank and withdrew the amount. There is also an allegation that signatures of the two Presiding Officers were forged and false documents have been created as if they were addressed from the Court itself. There is also an allegation that round seal is also got created where as it is the case of the District Court Office that no such seals are used by the said Court while addressing the letters to the Bank in MVC Cases. It has also come on record that in respect of premature withdrawal of the fixed deposit amounts pertaining to the MVC cases, the present petitioner was the Counsel who appeared for the claimants before the court. Now it is the contention of the prosecution that investigating officer has to seize the fake seal which was prepared and he has to collect the documents involved in the case and hence, custodial interrogation of the petitioner is necessary.

10. I have perused the decisions relied upon by the learned Senior Counsel appearing for the petitioner which are referred above. Regarding the contention of the petitioner that before arrest, notice under Section 41-A of Cr.P.C. ought to have been issued by the investigating officer is concerned, I have perused the CD file which clearly goes to show that such step had been taken by the investigating officer. The materials also go to show that the notice as per Section 41-A of Cr.P.C. was issued and it was entrusted to H.C. No.430 namely one Jayaram to go to the residence of the petitioner to serve notice on him. The said Jayaram, Head Constable, went to the house of the petitioner and found that it was locked and he affixed the said notice on the door. It is also reported by the Head Constable that he wanted to see the petitioner and hence, he went in and around the office of the petitioner, but the petitioner was not found in the said place. So this material goes to show prima facie that the petitioner absconded which is also observed by the learned Sessions Judge in the bail order.

11. Looking to the materials on record, though the offences are triable by the Magistrate Court, but the allegations are serious in nature. I have also perused the documents produced by the learned Senior Counsel for the petitioner that the petitioner is suffering from rectal prolapse. But this document is of the year 2009.

Therefore, this document will not be helpful to the petitioner. Looking to the materials on record, I am of the opinion that custodial interrogation of the present petitioner is necessary in this case. Therefore, it is not a fit case to exercise discretion in favour of the petitioner for grant of anticipatory bail. Accordingly, the petition is rejected.

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