

Sandeep, vs State of Kerala,

Sandeep, vs State of Kerala,

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Court : Kerala

Decided On : Apr-17-2024

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./110/2024

Appellant : Sandeep,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
WEDNESDAY, THE 17TH DAY OF APRIL 2024 / 28TH CHAITHRA,
1946 BAIL APPL. NO. 110 OF 2024 CRIME NO.2685/2023 OF
ERNAKULAM SOUTH POLICE STATION, ERNAKULAM
PETITIONER/ACCUSED: SANDEEP, AGED 37 YEARS MANAGER,
SPACE INTERNATIONAL, DD MILESTONE, KADAVANTHARA,
ERNAKULAM CITY, ERNAKULAM DISTRICT, PERMANENT
ADDRESS: MANFILED INTERNATIONAL ,KOMATH LANE,
PALARIVATTOM, KOCHI, PIN - 682024

BY ADVS. C.D.JOHNY REJI R. RESPONDENTS/RESPONDENTS: 1
STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031 2 STATION HOUSE
OFFICER, STATION HOUSE OFFICER, ERNAKULAM TOWN POLICE
STATION, ERNAKULAM DISTRICT, PIN - 682015 ADDL R3 NIMMY
P.M., AGED 35 YEARS, W/O. ANTONY SUNIL, KONATHUVEETIL,
SOUTH CHITTOR P.O, CHERANELOOR, ERNAKULAM DISTRICT
ADDL R4 JISMY PAUL, AGED 31 YEARS, W/O. ALBIN P.O.,
PARAKKADAN HOUSE, OKKAL P.O., ERNAKULAM PIN-683550 ADDL
R5 MERIN VARGHESE, AGED 27 YEARS, W/O. ELDHO BABU,
ANJILICKAL HOUSE, THATHAMPALLY.P.O., ALAPPUZHA, PIN-
688013 ADDL R6 AKHILA THANKAPAN, AGED 33 YEARS, W/O.
SHYNE RAJ, KALAMBATTUKUDY HOUSE, KOTTAPADY P.O.,
KOTHAMANGALAM, ERNAKULAM, PIN-686692 ADDL ATHIRA S., R7
AGED 24 YEARS, W/O. BINOOP C.K.,

BIPIN BHAVANAM, IVERKALA WEST, NORTH PUTHANAMPALA P.O.,
KOLLAM, PIN-691553 ADDL R3 TO R7 IMPEADED AS PER ORDER
DATED

BY ADVS. VISHNU DAS A.RAJASIMHAN SRUTHI DAS VYKHARI.K.U RENJIT
GEORGE, SR.PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING BEEN
FINALLY HEARD ON 12.04.2024 ALONG WITH Bail Appl..243/2024, 245/2024
AND FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
WEDNESDAY, THE 17TH DAY OF APRIL 2024/28TH CHAITHRA, 1946 BAIL
APPL. NO. 243 OF 2024 CRIME NO.2968/2023 OF ERNAKULAM SOUTH
POLICE STATION, ERNAKULAM PETITIONERS/ACCUSED NOS.1 & 2: 1
RAJANI V.R., AGED 45 YEARS, W/O. SREEPRASAD, T/C 41/1820,
UTHRADAM, ATTUKAL, MANACAD P.O., THIRUVANANTHAPURAM, PIN -
695009 2 SREEPRASAD, AGED 55 YEARS, S/O. SUDHAKARAN, T/C 41/1820,

UTHRADAM, ATTUKAL, MANACAD P.O., THIRUVANANTHAPURAM, PIN - 695009 BY ADVS. THOMAS J.ANAKKALLUNKAL ANUPA ANNA JOSE KANDOTH SNEHA ELSA JOSEPH JAYARAMAN S. RESPONDENTS/STATE: 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 ADDL R2 JISMY PAUL, AGED 31 YEARS, W/O. ALBIN P.O., PARAKKADAN HOUSE, OKKAL.P.O., ERNAKULAM, PIN-683550 ADDL R3 MERIN VARGHESE, AGED 27 YEARS, W/O. ELDHO BABU, ANJILICKAL HOUSE, THATHAMPALLY P.O., ALAPPUZHA, PIN-688013 ADDL R4 AKHILA THANKAPAN, AGED 33 YEARS, W/O. SHYNE RAJ, KALAMBATTUKUDY HOUSE, KOTTAPADY P.O., KOTHAMANGALAM, ERNAKULAM, PIN-686692 ADDL R5 ATHIRA.S., AGED 24 YEARS, W/O.BINOOP.C.K., BIPIN BHAVANAM, IVERKALA WEST, NORTH PUTHANAMPALA.P.O., KOLLAM, PIN-691553 (ADDL R2 TO R5 IMPEADED AS PER ORDER DATED BY ADVS. A.RAJASIMHAN VYKHARI.K.U M.P.PRASANTH, PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 12.04.2024, ALONG WITH CONNECTED CASES, THE COURT ON 17.04.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN WEDNESDAY, THE 17TH DAY OF APRIL 2024/28TH CHAITHRA, 1946 BAIL APPL. NO. 245 OF 2024 CRIME NO.2685/2023 OF ERNAKULAM SOUTH POLICE STATION, ERNAKULAM PETITIONER/ACCUSED NO.3: SREEPRASAD, AGED 55 YEARS S/O. SUDHAKARAN, T/C 41/1820, UTHRADAM, ATTUKAL, MANACAD P.O.,THIRUVANANTHAPURAM, PIN - 695009 BY ADVS. THOMAS J.ANAKKALLUNKAL JAYARAMAN S. ANUPA ANNA JOSE KANDOTH SNEHA ELSA JOSEPH RESPONDENTS: 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 ADDL R2 NIMMY P.M., AGED 35 YEARS, W/O. ANTONY SUNIL, KONATHUVEETIL, SOUTH CHITTOR P.O., CHERANELOOR, ERNAKULAM DISTRICT, PIN-682027 ADDL R3 JISMY PAUL, AGED 31 YEARS, W/O. ALBIN P.O., PARAKKADAN HOUSE, OKKAL P.O., ERNAKULAM, PIN-

683550 ADDL R4 MERIN VARGHESE, AGED 27 YEARS, W/O. ELDHO BABU, ANJILICKAL HOUSE, THATHAMPALLY P.O., ALAPPUZHA, PIN-688013 ADDL R5 AKHILA THANKAPAN, AGED 33 YEARS, W/O. SHYNE RAJ, KALAMBATTUKUDY HOUSE, KOTTAPADY P.O., KOTHAMANGALAM, ERNAKULAM, PIN-686692 ADDL R6 ATHIRA S., AGED 24 YEARS, W/O. BINOOP C.K., BIPIN BHAVANAM, IVERKALA WEST, NORTH PUTHANAMPALA P.O., KOLLAM, PIN-691553 (ADDL R2 TO R6 IMPEADED AS PER ORDER DATED BY ADVS. VISHNU DAS A.RAJASIMHAN SRUTHI DAS VYKHARI.K.U M.P.PRASANTH, PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 12.04.2024, ALONG WITH CONNECTED CASES, THE COURT ON 17.04.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
WEDNESDAY, THE 17TH DAY OF APRIL 2024/28TH CHAITHRA, 1946 BAIL
APPL. NO. 807 OF 2024 CRIME NO.2968/2023 OF OF ERNAKULAM SOUTH
POLICE STATION, ERNAKULAM PETITIONER: SANDEEP, AGED 37 YEARS,
MANAGER, SPACE INTERNATIONAL, DD MILESTONE, KADAVANTHARA,
ERNAKULAM CITY, ERNAKULAM DISTRICT, PERMANENT ADDRESS:
MANFILED INTERNATIONAL, KOMATH LANE, PALARIVATTOM, KOCHI, PIN -
682024

BY ADVS. C.D.JOHNY REJI R. RESPONDENTS/STATE: 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN -
682031 2 STATION HOUSE OFFICER, ERNAKULAM TOWN POLICE STATION,
ERNAKULAM DISTRICT, PIN - 682015 M.P.PRASANTH, PUBLIC
PROSECUTOR THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
12.04.2024, ALONG WITH CONNECTED CASES, THE COURT ON 17.04.2024
DELIVERED THE FOLLOWING:

COMMON ORDER

Dated this the 17th day of April, 2024 These anticipatory bail applications have been filed under Section 438 of the Code of Criminal Procedure, 1908.

2. B.A.No.807/2024 is at the instance of the 3 rd

accused, Sri.Sandeep in crime No.2968/2023 of Ernakulam Town South Police Station. B.A.No.110/2024 is also at the instance of the above said Sandeep, who got arrayed as the 1st accused in crime No.2685/2023 of Ernakulam Town South Police Station.

3. B.A.No.243/2024 has been filed at the instance of

Rajani V.R. and Sreeprasad, who are accused Nos.1 and 2 in crime No.2968/2023, where Sandeep got arrayed as the 3rd accused. B.A.No.245/2024 is one filed by Sreeprasad, who got arrayed as the 3rd accused in crime No.2685/2023, where Sandeep got arrayed as the 1st accused.

4. Heard the learned Senior Counsel,

Adv.P.Vijayabhanu, Adv.Thomas J.Anakkallunkal, Adv.Johny C.D. for the petitioners, Sri.M.P.Prasanth, the learned Public Prosecutor and Sri.A.Rajasimhan, learned counsel for the respective defacto complainant/s in both crimes on 12.04.2024 and these matters reserved for orders.

5. Perused the relevant documents form part of the

case diaries, the averments in the petitions and the averments in the counter affidavit filed by the defacto complainant/s, at part with the arguments advanced.

5. In crime No.2968/2023, the prosecution

allegations is that accused Nos.1 to 4, viz., Rajani V.R., Sreeprasad, Sandeep and Blessy Varghese, with intention to cheat and defraud the defacto complainant and her friends, so as to make unlawful enrichment and to make corresponding loss to the defacto complainant and her friends, offered job VISA of Caregivers/Care Assistant in UK under the banner 'SPACE International', where the 1 st accused is the licensee, the 2nd accused is the owner and 3rd and 4th accused are the

Managers. Accordingly, they obtained Rs.14 lakh each, on 22.12.2023 and 27.12.2023, from the defacto complainant/s, Akhila Thankappan, Athira S and Merin Varghese. The specific allegation is that the said amount, coming to a total sum of Rs.56 lakh, was encashed through the account of the 3rd accused. The further allegation is that they have forged COS letter in this connection. On the above facts, the accused herein alleged to have committed offences punishable under Sections 406, 420, 465, 468 and 471 read with Section 34 of IPC.

6. In crime No.2685/2023, the allegation is same, but

the defacto complainant is only one. The prosecution alleges that accused Nos.1 to 3 obtained Rs.14 lakh from the defacto complainant through the account of the 1st accused on 28.12.2022 and 12.01.2023 with an offer to provide VISA as dealt in crime No.2968/2023 and cheated the defacto complainant after obtaining Rs.14 lakh from her. Thus, crime alleging commission of offences punishable under Sections 406 and 420 read with Section 34 of IPC was registered, against accused Nos.1 to 3 in this crime.

7. While canvassing anticipatory bail, Rajani V.R.

and Sreeprasad, who are accused Nos.1 and 2 in crime No.2968/2023 and Sreeprasad, who is the 3rd accused in crime No.2685/2023, the learned senior counsel would submit that in both crimes, the above persons have no role as per the materials available and 'SPACE international Travel Services' is owned and manned by Rajani V.R. and Sreeprasad and they have no direct involvement in the matter of collection of money by accused Nos.3 and 4 in crime No.2968/2023 and accused Nos. 1 and 2 in crime No.2685/2023. It is submitted by the learned counsel that accused Nos.3 and 4 in crime No.2968/2023 were dismissed from the company due to misappropriation of funds and foul play they have done during their tenure in the company for unlawful gain. Thereafter also, accused Nos.3 and 4 left the petitioner company and some complaints received from the candidates that 'SPACE International Travel Services' belonged to the 3rd accused took money from them and misappropriated. It is also pointed out that the 2nd accused lodged complaint against the 3rd accused on 17.08.2023 at Ernakulam Town South Police Station for misappropriation of funds by the 3rd accused in crime

No.2968/2023. Accordingly, the learned counsel pressed for anticipatory bail to them.

8. Similarly, learned counsel appearing for the other

accused would submit that they have bonafidely collected money with intention to provide job VISA and they had no intention to cheat and defraud the defacto complainants in any manner. According to him, the amounts collected were entrusted to one Rupesh Kumar for providing VISA and it was thereafter noticed that, after collecting money, Mr.Rupesh Kumar, who manned Ray Seven Education Agency, created recruitment agency with fake job opportunities in UK, after taking huge amounts from the candidates and other associates and thereby cheated the defacto complainants and the petitioners. He also pointed out that in this regard Central Crime Station, Basheerbag, Hyderabad registered crime against Rupesh Kumar and his concern. It was also pointed out that so far Rs.7 lakh each, were returned to the defacto complainants.

9. Zealously opposing bail, the learned counsel for

the defacto complainant/s, who filed a very detailed counter affidavit, mainly contended that when there are prima facie materials, in cases involving conspiracy to cheat and defraud the defacto complainants alleging economic offences having deproved conspiracies, grant of anticipatory bail will defeat the purpose of investigation. He also submitted that when misappropriation of huge amount of money is involved, care must be given in order to ensure that effective investigation shall not either be stalled or destroyed by granting pre-arrest bail.

10. In support of this contention, the learned counsel

placed a decision of this Court in *Rajeev A.R. v. State of Kerala* reported in 2023(2) KHC 620 and order in B.A.No.4060/2023 dated 14.11.2023, following the ratio in *Rajeev A.R's* case (*supra*).

11. Similarly, decision of the Hon'ble Apex Court in

Jagam Mohan Reddy Y.S. v. Central Bureau of Investigation reported in 2013 KHC 4402, with reference to paragraph No.15 of the judgment, wherein it is held as under:

15. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

12. Another decision of the Hon'ble Apex Court in

Chidambaram P. v. Directorate of Enforcement reported in 2019 KHC 6886 has been referred, mentioning paragraph No.73 of the above judgment. Paragraph No.73 reads as under:

73. Observing that the arrest is a part of the investigation intended to secure several purposes, in Adri Dharan Das v. State of W.B. (2005 KHC 628 : 2005 (4) SCC 303 2005 (2) KLT SN 27 : 2005 (2) KLJ 356 AIR 2005 SC 1057 : 2005 (1) KLD 480 : 2005 Cri LJ 1706), it was held as under: "19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and

order in the locality. For these or other reasons,

arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under S.438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the

accused in a cognizable offence. An interim order

restraining arrest, if passed while dealing with an application under S.438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under S.438 of the Code.

13. It is specifically pointed out by the learned counsel

for the defacto complainants that the damage done by the accused herein to the respective defacto complainants is not curable by any means. According to him, the defacto complainants are not only aggrieved in the matter of loss of money to the tune of Rs.14 lakh each, but they were given forged Sponsorship certificate, offer letter and rental agreement. In turn, UK authorities imposed 10 years ban on the defacto complainants to UK and the said ban is still continuing. Therefore, the defacto complainants are not in a position to go for job in UK for 10 years because of the overt acts at the instance of the petitioners. In such circumstances, arrest, custodial interrogation and recovery of relevant materials are inevitable, in these crimes, and grant of pre- arrest bail would defeat the investigation.

14. In paragraph No.2 of the counter affidavit filed in B.A.No.243/2024, the hazards based on the respective annexures have been narrated as under:

2. It is a huge scam where the accused advertised for hiring for UK in the Senior Carer/Care Givers through its official intagram and facebook accounts and collected Rs. 14.35 lakh each from 34 candidates including us. As per the Emigration Rules, 1983 the accused agency could collect Rs.30,000/- alone for each recruitment. After collecting the above amount they gave us forged sponsorship certificates, offer letter and rental agreement etc. and thus caused travel ban for 10 years. True

copies of the above advertisements are produced herewith and marked as Annexure R2(a). The accused together made us to execute Undertaking/Self Declaration forms and true copies of the same are produced herewith and marked as Annexure R2(b), (c), (d) and (e). True copies of the forged Certificates of Sponsorship details issued to us by the accused are produced herewith and marked as Annexure R2(f), (g) (h) and (i). True copies of the forged offer letters issued to us by the accused are produced herewith and marked as Annexure R2(j), (k), (l) and (m). Apart from that the accused gave us forged rental agreements also. Under the guise of priority visa the accused obtained Rs. 000. True copy of the ban letters are produced herewith and marked as Annexure R2(n), (o), (p) and (q).

15. On perusal of Annexure R2(n), R2(o), R2(p) and

R2(q), issued from the Home Office Web www.gov.uk/ukvi, it is discernible that R2(n) was issued to Jismy Paul intimating that her application for Skilled Worker Health and Care Migrant dated 09.01.2023 was refused and it was informed as under: Your application is therefore refused under Paragraphs 9.7.1 (a) and 9.7.2 of the Immigration Rules part 9 in line with Paragraph SW 2.1 of the Immigration Rules Appendix Skilled Worker. xxx (omitted)

You should note that because this application for entry clearance has been refused under paragraphs 9.7.1 (a) and 9.7.2 of the Immigration Rules, any future applications may also be refused under paragraphs 9.8.1 (a) and 9.8.4 (b) of the Immigration Rules. A refusal under paragraphs 9.8.1 (a) and 9.8.4 (b) of the Immigration Rules attracts an automatic refusal period of up to 10 years. The period starts from the date of this refusal notice.

16. Similar letters were issued to Merin Varghese, Akhila Thankappan and Athira Sobha as per Annexure R2(o) to R2(q).

17. It is argued by the learned counsel for Rajani V.R.

and Sreeprasad that they have no role in collecting money by the other accused, who cheated the defacto complainants by receiving money. It is submitted further that 'SPACE International Travel Services' is an authorised institution having license, obtained by Rajani V.R. and owned by Sreeprasad and they have been doing the business of job recruitment with bonafides and no complaints so far raised by anybody.

18. Adverting to this contention, the learned counsel

for the defacto complainant would submit that in the FIS in crime No.2968/2023, the roles of Rajani V.R. and Sreeprasad were specifically stated and the records would go to show that the recruitment was at the instance of 'SPACE International Travel Services' licensed by Rajani V.R. and owned by Sreeprasad. Therefore, their complicity in these crimes is at par with the other accused.

19. On perusal of the materials available to consider

whether the petitioners herein deserve anticipatory bail, prima facie, 14 lakh each were collected from respective defacto complainants and others, with offer to provide job of 'Skilled Worker Health and Care Migrant' and thereafter, the accused herein failed to provide the job as agreed, instead, fake documents were given, which in turn, led to imposition of travel ban to the aggrieved persons as already discussed. The travel ban for ten years is still continuing. They have returned Rs.7 lakh thereafter, after retaining the remaining amount. It is submitted on 12.04.2024 that Rs.25,000/- each were also returned back.

20. Even though accused Nos.1 and 2 in crime

No.2968/2023 raised plea of innocence by attributing the overt acts on the shoulders of other accused, it is discernible from the FIS in crime No.2968/2023, the involvement of Rajani V.R. and Sreeprasad were mentioned. Apart from that, when a complaint was lodged by the aggrieved persons before the police, Sreeprasad and Sandeep appeared and ensured return of money. Thus, the role of Sreeprasad in this crime could not be read in segregation from Sandeep and Blessy. However, it appears that no active participation in these occurrences at the

instance of Rajani V.R. though she is the licensee of 'SPACE International Travel Services' and the business is manned by Sreeprasad. So reading the complicity of Rajani V.R. in isolation with the other accused, she can be enlarged on anticipatory bail while disallowing the anticipatory bail plea at the instance of the other accused. Sandeep and Blessy would contend that they bonafidely received the amount, but they were cheated by 'Ray Seven Education Agency' at the instance of Rupesh Kumar. In fact, those explanations would not wipe out the culpability of the other accused persons. That apart, the trauma created by the overt acts of the other accused, by providing fake documents, which resulted in travel ban of 10 years to the aggrieved persons is a matter of serious concern. Therefore, this is a case wherein amount of cheating, falsification of documents and using the same as genuine etc. are matters which would require detailed investigation after custodial interrogation. In such cases, grant of anticipatory bail would defeat the purpose of investigation and the investigation is not effectively going on for the last 4 months since these anticipatory bail applications have been pending from 09.01.2024 and there has been an interim order not to arrest the petitioners granted by my learned predecessor on 29.01.2024.

21. In view of the above discussion, all bail

applications, except the anticipatory bail plea of the 1st accused in crime No.2968/2023, are liable to fail and are dismissed and the interim order shall stand vacated with liberty to the Investigating Officer to go with the investigation as per law. The other petitioners (except Rajani V.R.) are directed to surrender before the Investigating Officer within seven days and cooperate with the investigation in accordance with law. B.A.No.243/2024 stands allowed in part granting anticipatory bail to Rajani V.R., the 1st accused on imposing conditions:

- i. The 1st accused in crime No.2968 of 2023/Rajani V.R. shall surrender before the Investigating Officer within ten days from today and on such surrender, the Investigating Officer can question her and record statement. In the event of her arrest, the Investigating Officer shall produce Rajani V.R. before the Jurisdictional Court on the date of arrest itself.
- ii. On such production, Jurisdictional Court shall release Rajani

V.R. on bail, on executing bond for Rs.30,000/- (Rupees thirty thousand) by herself and by two solvent sureties, each for the like sum to the satisfaction of the Jurisdictional Court. iii. The 1st accused in crime No.2968 of 2023/Rajani V.R. shall co-operate with investigation and shall be made available for interrogation and for the purpose of

investigation, as and when the Investigating Officer directs so. iv. The 1st accused in crime No.2968 of 2023/Rajani V.R. shall not leave India without prior permission of the jurisdictional court. v. The 1st accused in crime No.2968 of 2023/Rajani V.R. shall not, intimidate the witnesses or interfere with the investigation in any manner. vi. The 1st accused in crime No.2968 of 2023/Rajani V.R. shall not commit any offence during the currency of this bail and any such involvement is a reason to cancel the bail hereby granted.

Sd/- A. BADHARUDEEN JUDGE nkr

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