

Affin Thomas vs State of Kerala,

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Court : Kerala

Decided On : Jan-22-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./115/2024

Appellant : Affin Thomas

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 22ND DAY OF JANUARY 2024 / 2ND MAGHA, 1945 BAIL APPL. NO. 113 OF 2024 CRIME NO.2608/2023 OF KALAMASSERY POLICE STATION, ERNAKULAM AGAINST THE ORDER IN CMP 3004/2023 OF JMFC, KALAMASSERY (TEMPORARY)

PETITIONER/ACCUSED 1: AFFIN THOMAS AGED 39 YEARS S/O. THOMAS.M.J, MANIYANGATTU HOUSE, NEELEESWARAM, MALAYATTOOR VILLAGE, ERNAKULAM,, PIN - 683587 BY ADVS. S.RAJEEV V.VINAY(K/355/2009) M.S.ANEER(K/644/2013) PRERITH PHILIP JOSEPH(K/000736/2015) ANILKUMAR C.R.(K/001190/2020)

K.S.KIRAN KRISHNAN(K/3514/2022) RESPONDENT/STATE: STATE OF KERALA, REPRESENTED BY THE SUB INSPECTOR, KALAMASSERY POLICE STATION THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 BY SR PP SMT SEETHA S THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22.01.2024, ALONG WITH BAIL APPL..115/2024, 116/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 22ND DAY OF JANUARY 2024 / 2ND MAGHA, 1945 BAIL APPL. NO. 115 OF 2024 CRIME NO.2688/2023 OF KALAMASSERY POLICE STATION, ERNAKULAM AGAINST THE ORDER IN CMP 3002/2023 OF JMFC, KALAMASSERY (TEMPORARY)

PETITIONER/ACCUSED 1: AFFIN THOMAS AGED 39 YEARS S/O. THOMAS.M.J, MANIYANGATTU HOUSE, NEELEESWARAM, MALAYATTOOR VILLAGE, ERNAKULAM,, PIN - 683587 BY ADVS. S.RAJEEV V.VINAY(K/355/2009) M.S.ANEER(K/644/2013) PRERITH PHILIP JOSEPH(K/000736/2015) ANILKUMAR C.R.(K/001190/2020) K.S.KIRAN KRISHNAN(K/3514/2022) RESPONDENT/STATE: STATE OF KERALA, REPRESENTED BY THE SUB INSPECTOR, KALAMASSERY POLICE STATION THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 BY SR PP SMT. NEEMA T.V THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22.01.2024, ALONG WITH BAIL APPL..113/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 22ND DAY OF JANUARY 2024 / 2ND MAGHA, 1945 BAIL APPL. NO. 116 OF 2024 CRIME NO.2689/2023 OF KALAMASSERY POLICE STATION, ERNAKULAM AGAINST THE ORDER IN CMP 3003/2023 OF JMFC, KALAMASSERY (TEMPORARY)

PETITIONER/STATE: AFFIN THOMAS AGED 39 YEARS S/O. THOMAS.M.J, MANIYANGATTU HOUSE, NEELEESWARAM, MALAYATTOOR VILLAGE, ERNAKULAM,, PIN - 683587 BY ADVS. S.RAJEEV V.VINAY(K/355/2009) M.S.ANEER(K/644/2013) PRERITH PHILIP JOSEPH(K/000736/2015) ANILKUMAR C.R.(K/001190/2020) K.S.KIRAN KRISHNAN(K/3514/2022) RESPONDENT/STATE: STATE OF KERALA, REPRESENTED BY THE SUB INSPECTOR, KALAMASSERY POLICE STATION THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 BY SR PP SMT.NEEMA T.V THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22.01.2024, ALONG WITH BAIL APPL..113/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 22nd day of January, 2024 COMMONORDER These applications are filed under Section 439 of the Code of Criminal Procedure by the 1st accused in Crime Nos.2608/2023, 2688/2023 and 2689/2023, respectively, of the Kalamassery Police Station, Ernakulam, registered against him for allegedly committing the offences punishable under Sections 406 and 420 r/w Section 34 of the Indian Penal Code. The petitioners arrest was recorded on 17.12.2023.

2. The essence of the prosecution case in the

above three crimes is that: the accused (three in number) with an intention to obtain unlawful gain from the informants received amounts as tuition fees for arranging free admission in a course named AUSBULDING IN NURSING in Germany through an establishment named ABRO- AID Immigration Service. Although the accused received the amounts from the informants, they failed to provide admission for the informants. Thus, the accused have committed the

above offences.

3. Heard; Sri. S. Rajeev, the learned counsel appearing for the petitioner and Smt. Neema. T.V and Smt. Seetha. S, the learned Public Prosecutors appearing for the respondent.

4. The learned counsel appearing for the

petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. The petitioner has been falsely implicated in the crime. The petitioner has no mens rea to cheat the informants. In fact, the petitioner had arranged a course for the students to study the German language. But, the faculty who was supposed to teach the students, left the services of the company and the course could not be completed. Without prejudice to the right of the petitioner to raise his defence, the petitioner is also making an attempt to settle the matter. Moreover, the petitioner has been in judicial custody since 17.12.2023. The petitioner's continued detention is unnecessary. The petitioner is willing to abide by any stringent condition that may be imposed by this Court. Hence, these applications may be allowed.

5. The learned Public Prosecutors seriously

opposed the applications. They contended that in addition to the above crimes, the petitioner is also an accused in Crime Nos.2454/2023, 2821/2023, 28/2024 and 29/2024 of the very same Police Station and Crime No.2546/2023 of a different Police Station, all registered for committing similar offenses. The petitioner is in judicial custody in the above crimes. The investigation in these cases is only at its nascent stage. Therefore, letting off the petitioner on bail would affect the full and proper investigation of the crime. Hence, the bail application may be dismissed.

6. The prosecution case in all the above cases is

that the petitioner and the accused 1 to 3, with an intention to cheat the informants, received money from them promising to secure admission for their children abroad. However, they refused to extend the promised services and refused to return the money they deposited. Thus, the accused have committed

the above offences.

7. In *Prasanta Kumar Sarkar v. Ashis Chatterjee and Another* [(2010) 14 SCC 496], the Honble Supreme Court in paragraph 9, observed as follows: 9. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation:

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail.

8. In *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another* [AIR 2004 SC 1866] also the Honble Supreme Court has observed thus:

11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non application of mind. It is also necessary for the Court granting bail to consider among other circumstances, the following factors also before

granting bail; they are, (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; (c) Prima facie satisfaction of the Court in support of the charge. See Ram Govind Upadhyay v. Sudarshan Singh and others (2002(3) SCC 598) and Puran v. Rambilas and another (2001 (6) SCC 338)

9. After bestowing my anxious consideration to the

materials placed on record, particularly taking into account the nature, seriousness and gravity of the offences, that the petitioner is an accused in five other cases of similar nature, that the investigation is only at a nascent stage, and that the recovery has to be effected, I am of the definite view that the petitioner is not entitled to be released on bail at this stage because there is a danger of justice being thwarted. These applications are meritless and are only to be dismissed.. Resultantly, these bail applications are dismissed. Sd/- C.S.DIAS, JUDGE
mtk/22.01.2024

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