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**Sharlymon, vs State of Kerala,**

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**SooperKanoon Citation** : sooperkanoon.com/1287586

**Court** : Kerala

**Decided On :** Mar-27-2024

**Judge** : Honourable Mr.Justice Ziyad Rahman a.a.

**Appeal No.** : Bail Appl./593/2024

**Appellant** : Sharlymon,

**Respondent** : State of Kerala,

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. WEDNESDAY, THE 27TH DAY OF MARCH 2024 / 7TH CHAITHRA, 1946 BAIL APPL. NO. 593 OF 2024 CRIME NO.1105/2022 OF ADOOR POLICE STATION, PATHANAMTHITTA PETITIONER/2ND ACCUSED:

SHARLYMON, AGED 54 YEARS S/O KUMARAN, MUNDACKAL HOUSE, MALAYATTOOR VILLAGE, MALAYATTOOR PO, ERNAKULAM, PIN - 683587 BY ADVS. P.SANJAY A.PARVATHI MENON(K/000268/1991) BIJU MEENATTOOR(K/620/1992) PAUL VARGHESE (PALLATH)(K/000171/2017) P.A.MOHAMMED ASLAM(K/000843/2017) KIRAN NARAYANAN(K/000131/2018) RAHUL

RAJ P.(K/547/2020) AMRUTHA M. NAIR(K/001096/2022) MUHAMMED BILAL.V.A(K/1033/2023) MEERA R. MENON(K/002575/2023) BASILA BEEGAM(K/2283/2022)

RESPONDENT/COMPLAINANT: 1 STATE OF KERALA,REPRESENTED BY THE STATION HOUSE OFFICER, ADOOR POLICE STATION, ADOOR, PATHANAMTHITTA- 689694 (THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 KRISHNAKUMAR V.R,S/O RAMAKRISHNA KURUP, VAZHUVELI VADAKKETHIL HOUSE, MALAMEKKARA, ADOOR, PERINGANADU, PATHANAMTHITTA. [IMPLEADED AS ADDITIONAL R2 AS PER

## ORDER DTD 1-3-24 IN CRL MA 2/24]

BY ADVS. BABY THOMAS GEORGE T.J(K/1459/2020) INDRAJITH S KAIMAL(K/001232/2020) ALICIA JOSE(K/001437/2021) AISWARYARAJ(K/000870/2023) JOHNY GEORGE(D/15394/2023) OTHER PRESENT: ADV PREMCHAND R NAIR-GP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27.03.2024, ALONG WITH Bail Appl..1606/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. WEDNESDAY, THE 27TH DAY OF MARCH 2024 / 7TH CHAITHRA, 1946 BAIL APPL. NO. 1606 OF 2024 CRIME NO.1105/2022 OF ADOOR POLICE STATION, PATHANAMTHITTA PETITIONER/3RD ACCUSED: SUMITH GEORGE, AGED 49 YEARS S/O M.J. GEORGE, MUNDUATHANATHU HOUSE, VALAVOOR P.O., EDANADU, PALA, KOTTAYAM DISTRICT, PIN - 686574 BY ADV GEORGE SEBASTIAN RESPONDENT/COMPLAINANT: STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 ADV PREMCHAND R NAIR-GP THIS BAIL

APPLICATION HAVING COME UP FOR ADMISSION ON 27.03.2024, ALONG WITH Bail Appl..593/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## ORDER

These applications are filed under Section 438 of the Code of Criminal Procedure seeking anticipatory bail.

2. The petitioners in these applications are the accused Nos. 2

and 3 in Crime No.1105/2022. The said crime was registered on the basis of a complaint submitted by the 3 rd respondent in BA No.907/2024 alleging offences punishable under Section 420, 465, 468 and 471, read with Section 34 of Indian Penal Code.

2. The prosecution case is that, the accused numbers 1 to 3,

with the intention to cheat the defacto complainant, made the defacto complainant believe that they would secure a loan from the bank to enable him to purchase a Company abroad. Thereupon, he was persuaded to hand over the title deeds of his property and by depositing the same, before the South Indian Bank, Perinthalmanna branch, wherein the 5th accused was working as the Manager, obtained a loan of

Rs.1,24,00,000/-in the name of the 4th accused. In the loan transaction, the defacto complainant was the surety. The allegation against the petitioners and the other accused is that, the said transactions were by fabricating documents without the knowledge of the defacto complainant. The crime was registered in such circumstances and as the petitioners apprehend arrest in connection with the investigation, these applications for anticipatory bail were filed.

3. Heard, Sri.P Sanjay, the learned counsel appearing for the 2 nd

accused and Sri. George Sebastian, the learned counsel appearing for the 3rd accused, Sri.Premchand R Nair, the learned Public Prosecutor appearing for the

State and Smt.Aiswaryaraj, the learned counsel appearing for the defacto complainant.

4. The specific contention put forward by the learned counsel

appearing for the petitioners is that, basically this is a civil transaction which was given the colour of a criminal offence. It was pointed out that, the transactions which are the subject matter of the crime have taken place in the year 2018 and there were certain disputes pertaining to the said transactions. The same resulted in filing of OS No.450/2020 before the Munsiff's Court, Aluva by the 2nd accused, against the defacto complaint. The said dispute was ultimately settled, as per Annexure A1 document, wherein both parties have agreed that all the pending disputes, both civil and criminal have been settled between them and no subsisting grievances are there for any of the parties. The Annexure A1 agreement was entered into on 07.07.2021 and the FIR in this case was registered subsequently on 01.08.2022. It was also pointed out by the learned counsel for the petitioners that, defacto complainant submitted a complaint only after the recovery proceedings were initiated at the instance of the Bank and the learned counsel also brought the attention of this Court to WP(C) No.22784/2021 filed by the defacto complainant, challenging such recovery proceedings, wherein, there is no mention about the alleged falsity of the transactions referred to in the present crime. It was also submitted that they are ready to cooperate with the investigation and shall abide by any conditions that may be imposed by the court.

5. The learned Public Prosecutor, on the other hand, opposes the

application pointing out that, there are specific allegations of cheating and forgery, against the petitioners and the documents which are allegedly forged are also to be recovered.

6. The learned counsel appearing for the defacto complainant

also opposes the said application by highlighting that this is a transaction which involves huge amounts and according to him, the said transactions were without the knowledge of the defacto complainant and all the transactions were entered with the sole purpose of cheating him.

7. I have carefully gone through the records. As rightly pointed

out by the learned counsel for the petitioners, despite the fact that, Annexure A1 agreement contains a settlement of dispute between the 2nd accused and the defacto complainant, the FIR does not contain any details as to the said transactions. Moreover, even the full address of the accused persons are not seen referred to in the FIR and the reference in the FIR with respect to the accused persons is that their addresses are unknown. This is something very crucial when it is considered along with the other aspects revealed from the documents. Moreover, this is a transaction occurred in the year 2018 and the complaint was submitted only in the year 2022. It is also the case of the petitioners that, a portion of the amount obtained as loan from the South Indian Bank has been utilized for settling the two loan accounts of the defacto complainant as well. The fact that the defacto complainant submitted another Writ Petition challenging the recovery proceedings initiated by the South Indian Bank, without any reference to the allegation regarding fraudulent transactions pertaining to the above, is also a relevant factor.

8. Thus when all the aforesaid aspects are taken into

consideration, I find some force in the contention put forward by the learned counsel for the petitioners in this regard. However, all these are matters to be investigated and since the investigation is now in progress, I do not intend to go deeper into the same. Thus, after considering the materials placed before this court, I am of the view that, for ensuring a proper investigation, the cooperation of the petitioners are necessary. Therefore, these applications can be disposed of with the following directions.

i) The petitioners shall surrender before the Investigating Officer, within a period of three weeks from today for subjecting themselves to interrogation and in the event of any arrest, they shall be released on bail on executing a bond for Rs.50,000/- (Rupees fifty thousand only) each with two solvent sureties each for the like sum.
ii) The petitioners shall fully cooperate with the investigation, including subjecting

themselves to the deemed police custody for the purpose of recovery, if any, as and when demanded.

iii) The petitioners shall appear before the Investigating Officer between 10.00 a.m and 11.00 a.m every Saturday until the filing of the final report. iv) The petitioners shall also appear before the Investigating Officer as and when required. v) The petitioners shall not commit any offence of similar nature while on bail. vi) The petitioners shall not make any attempt to contact any of

the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation. vii) The petitioners shall not leave India without the permission of the trial Court. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation of bail, if any, and pass appropriate orders in accordance with law. Sd/- ZIYAD RAHMAN A.A JUDGE rpk

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