

Krishnan G. 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./6006/2022

Appellant : Krishnan G.

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. 5996 OF 2022 CRIME NO.1045/2022 OF Thampanoor Police Station, Thiruvananthapuram PETITIONER/S: KRISHNAN G. AGED 54 YEARS SON OF GANGADHARAN, UTHRADAM HOUSE, KIZHAKKEKUNNUVILA, THOZHUKKAL, NEYYATTINKARA P O, PERUMPAZHUTHOOR VILLAGE, THOZHUKKAL DESOM, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM DISTRICT,, PIN - 695121

BY ADVS. K.RAJESH KANNAN P.C.VIJAYAKUMAR RESPONDENT/S:
1 STATE OF KERALA REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN -
682031 2 STATION HOUSE OFFICER THAMPANOOR POLICE
STATION, THIRUVANANTHAPURAM,, PIN - BY ADV PUBLIC
PROSECUTOR OTHER PRESENT: SR.PP. SMT.NEEMA T.V. SR.PP.
SMT.NEEMA T.V. THIS BAIL APPLICATION HAVING COME UP FOR
ADMISSION ON 22.01.2024, 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.
6006 OF 2022 CRIME NO.1081/2022 OF Thampanoor Police Station,
Thiruvananthapuram PETITIONER/S: KRISHNAN G. AGED 54 YEARS
SON OF GANGADHARAN, UTHRADAM HOUSE,
KIZHAKKEKUNNUVILA, THOZHUKKAL, NEYYATTINKARA P O,
PERUMPAZHUTHOOR VILLAGE, THOZHUKKAL DESOM,
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM DISTRICT,, PIN
- 695121 BY ADVS. K.RAJESH KANNAN P.C.VIJAYAKUMAR
RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,
PIN - 682031 2 STATION HOUSE OFFICER THAMPANOOR POLICE
STATION, THIRUVANANTHAPURAM,, PIN - SR.PP. SMT.NEEMA T.V.
THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
22.01.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

COMMON ORDER

The applications are filed under Section 438 of the Code of Criminal Procedure, 1973, for orders of pre-arrest bail.

2. The petitioner is the 2 nd accused in Crime

Nos.1045/2022 and 1081/2022 of the Thampanoor Police Station, Thiruvananthapuram, registered against him and the 1st accused for allegedly committing the offences punishable under Sections 406 and 420 r/w Section 34 of the Indian Penal Code.

3. The gist of the prosecution case is that: the 1 st

accused is an employee of the Indian Railways. The accused 1 and 2 had cheated the defacto complainants by promising them to secure an employment for their children in the Indian Railways. Accordingly, the 1st accused demanded and received money from the defacto complainants. It was the 2nd accused, who convinced the defacto complainants that the 1st accused could arrange the job in the Railways. However, the accused failed to secure a job for the children of the defacto complainants or return the money. Thus, the accused have committed the above offences.

4. Heard; Sri.K.Rajesh Kannan, the learned counsel appearing for the petitioner and Smt.Neema T.V., the learned Public Prosecutor.

5. The learned counsel appearing for the petitioner

submitted that the petitioner is totally innocent of the accusations leveled against him. He has been falsely implicated in the crime. Even going by the FIR, it is the 1 st accused who had collected the money from the de-facto complainants. The investigation in the case is practically complete. The petitioner's custodial interrogation is not necessary. Hence, the bail applications may be allowed.

6. The learned Public Prosecutor strenuously opposed

the applications. She contended that in addition to the above two cases, there are other five crimes also registered against the accused. Nearly Rs.2/- crore has been swindled by the accused on the false promise that they would secure employments for the children of the defacto complainants in the Railways. The petitioner's custodial interrogation is necessary for the full and proper investigation of the crime. The crimes have been transferred to the Crime Branch and further investigation is in progress. Letting off the petitioner by an order of pre-arrest bail

would hamper the investigation. Hence, the applications may be dismissed.

7. In *Siddharam Satlingappa Mhetre v. State of Maharashtra* [(2011) 1 SCC 694] the Honble Supreme Court has held as follows:

111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal

of anticipatory bail should necessarily depend on the facts

and circumstances of each case. As aptly observed in the Constitution Bench decision in *Sibbia case* [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 Cr PC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material

against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern; (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it

is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

126. We deem it appropriate to reiterate and assert that discretion vested in the court in all matters should be exercised with care and circumspection depending upon the

facts and circumstances justifying its exercise. Similarly, the

discretion vested with the court under Section 438 Cr PC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

8. Likewise, in *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565] the Honble Supreme Court has held as follows:

21. The High Court says in its fourth proposition that in addition to the limitations mentioned in Section 437, the petitioner must make out a special case for the exercise of the power to grant anticipatory bail. This, virtually, reduces the salutary power conferred by Section 438 to a dead letter. In its anxiety, otherwise just, to show that the power conferred by Section 438 is not unguided or uncanalised,

the High Court has subjected that power to a restraint which will have the effect of making the power utterly unguided. To say that the applicant must make out a special case for the exercise of the power to grant anticipatory bail is really to say nothing. The applicant has undoubtedly to make out a case for the grant of anticipatory bail. But one cannot go further and say that he must make out a special case. We do not see why the provisions of Section 438 should be suspected as containing something volatile or incendiary, which needs to be handled with the greatest care and caution imaginable. A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail.

9. After bestowing my anxious consideration to the

materials placed on record, particularly taking note of the seriousness, gravity and nature of the offences alleged against the petitioner, that the investigation in the case is still in progress by the present investigation team and that the petitioner's custodial interrogation is necessary, I am of the definite view that the petitioner is not entitled to invoke the extra ordinary jurisdiction of this Court under Section 438 of the Code. Therefore, I hold that this is not a fit case to grant the petitioner an order of pre-arrest bail. Consequentially, the bail applications are dismissed. Nonetheless, I direct, in case the petitioner surrenders before the Investigating Officer of the concerned Police Station within a period of ten days from today, he shall be interrogated and, thereafter, be produced before the jurisdictional Magistrate on the date of surrender itself. Then, if the petitioner moves an application for bail, the jurisdictional Court shall, untrammelled by any observations in this order, consider the bail application on its merit and as expeditiously as possible. If the petitioner fails to surrender before the Investigating Officer as directed above, the Investigating Officer shall be free to arrest the petitioner, as if no order has been passed in these cases. Sd/- C.S.DIAS
JUDGE rkc/22.01.24 APPENDIX OF BAIL APPL. 5996/2022 PETITIONER ANNEXURES Annexure 1 TRUE COPY OF THE F.I.R. DATED 14.7.2022 IN CRIME NO.1045/2022 OF THAMPANOOR POLICE STATION, THIRUVANANTHAPURAM DISTRICT APPENDIX OF BAIL APPL. 6006/2022 PETITIONER ANNEXURES Annexure 1 TRUE COPY OF THE F.I.R. DATED 23.7.2022 IN CRIME NO.1081/2022 OF THAMPANOOR POLICE STATION, THIRUVANANTHAPURAM DISTRICT

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