

Rajeev Kumar, vs State of Kerala,

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Court : Kerala

Decided On : Feb-15-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./1123/2024

Appellant : Rajeev Kumar,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY, THE 15TH DAY OF FEBRUARY 2024 / 26TH MAGHA, 1945 BAIL APPL. NO. 1123 OF 2024 CRIME NO.819/2023 OF AROOR POLICE STATION, ALAPPUZHA PETITIONER/ACCUSED: RAJEEV KUMAR, AGED 43 YEARS SHIVAPRIYA,PALLARIMANGALAM (P.O), MAVELIKKARA,ALAPPUZHA, PIN - BY ADVS. CIMIL CHERIAN KOTTALIL MINTU CHERIYAN RESPONDENT/RESPONDENT: STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - SMT. SEETHA S., SR.P.P. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 15.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The application is filed under Section 438 of the Code of Criminal Procedure, 1973, for an order of pre-arrest bail.

2. The petitioner is the third accused in crime

No.819/2023 of the Aroor Police Station, Alappuzha registered against the accused (3 in number) for allegedly committing the offences punishable under Sections 406, 420 r/w.34 of the Indian Penal Code and Sections 24(1)(b) and 24(1)(g) of the Emigration Act, 1983.

3. The gist of the prosecution case is that: the accused

in connivance and in furtherance of their common intention, assured jobs to the defacto complainant and others in Limpass, Poland. Consequent to the promise made by them, the defacto complainant and others transferred an amount of Rs.5 lakh to the bank account of the accused. Out of the said amount, an amount of Rs.1,50,000/- was transferred to the bank account of the third accused and Rs.50,000/- was paid by Google pay. However, the accused did not secure the employment or return the money. Thus, the accused have committed the above offences.

4. Heard; Sri.Cimil, the learned counsel appearing for the petitioner and Smt.Seetha S., the learned Public Prosecutor.

5. The learned counsel for the petitioner submitted

that the petitioner is totally innocent of the accusations levelled against him and he is falsely implicated in the crime. The petitioner is only an employee of the accused 1 and 2. The entire transactions were conducted by accused 1 and 2. The petitioner is willing to cooperate with the investigation and abide by any stringent condition that may be imposed by this Court. The petitioner's custodial interrogation is not necessary. The petitioner has no criminal antecedents. Hence, the application may be allowed.

6. The learned Public Prosecutor vehemently opposed

the application. She contended that there is a specific overt act alleged against the petitioner, that an amount of Rs.1,50,000/- was transferred to the bank account and Rs.50,000/- was paid by Google pay. The petitioner's custodial interrogation is necessary and recovery is to be effected. If the petitioner is granted an order of pre-arrest bail, there is every likelihood of him tampering with the evidence and influencing the witnesses. Hence, the application 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 *Jai Prakash Singh v. State of Bihar & Anr.* [(2012) 4 SCC 379] the Hon'ble Supreme Court has

held that an order of pre-arrest bail shall be granted only in

exceptional cases where the court is prima facie of the view that the applicant was falsely enrped in crime and that he is not likely to misuse his liberty.

9. After bestowing my anxious consideration to the

materials placed on record, the rival submissions made across the Bar and taking into account the nature, gravity and seriousness of the offences alleged against the petitioner, that the petitioner has received an amount of Rs.2 lakh from the defacto complainant, that the petitioner's custodial interrogation is necessary and that the recovery is to be effected, I am of the definite view that the petitioner is not entitled to invoke the extraordinary jurisdiction of this Court under Section 438 of the Code. Therefore, I hold that this is not a fit case to grant an order of pre-arrest bail. Consequently, the bail application is dismissed.

10. Nonetheless, I direct that, if the petitioner

surrenders before the Investigating Officer within two weeks from today, he shall be interrogated and, thereafter, be produced before the jurisdictional Court 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 merits and as expeditiously as possible. If the petitioner does not 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 this case. Sd/- C.S.DIAS JUDGE shg

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