

Vishnu vs State of Kerala

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Court : Kerala

Decided On : Apr-23-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./3228/2024

Appellant : Vishnu

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS TUESDAY, THE 23RD DAY OF APRIL 2024 / 3RD VAISAKHA, 1946 CRIME NO.14/2024 OF CYBER CRIME POLICE STATION, THRISSUR, Thrissur AGAINST THE ORDER/JUDGMENT DATED IN CRMP NO.2468 OF 2024 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,IRINJALAKUDA PETITIONER/S: VISHNU AGED 27 YEARS S/O MOHANA CHANDRAN, PULIKKAKONATH HOUSE, PULIMATHU.P.O., ERNAKULAM, PIN - 695612 BY ADVS. A.RAJASIMHAN VYKHARI.K.U SHARAFUDHEEN M.K.

RESPONDENT/S: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 OTHER PRESENT:

SR.P.P.SMT.NEEMA.T.V. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Dated this the 23rd day of April, 2024

ORDER

The application is filed under Section 439 of the Code

of Criminal Procedure, 1973, by the accused in Crime No.14/2024 of the Cyber Crime Police Station, Thrissur, registered against the accused, for allegedly committing the offences punishable under Section 420 of the Indian Penal Code (in short, 'IPC') and Section 66D of the Information Technology Act. The petitioner was arrested on 22.03.2024.

2. The essence of the prosecution case is that: the

accused got acquainted to the defacto complainant through Facebook. Then, the accused had introduced himself as a lady employee of the HDFC Bank, Hyderabad, with an intention to cheat the defacto complainant. Accordingly, he made the defacto complainant believe that he would be made permanent in the bank, if he had achieved the target. Accordingly, the accused made the defacto complainant transfer an amount of Rs.3,15,000/- during the period from 01.11.2023 to 01.01.2024 on an assurance that the accused would repay the amount to the defacto complainant. However, the accused failed to return the money. Thus, the accused has committed the above offences.

3. Heard; Sri.A.Rajasimhan, the learned counsel appearing for the petitioner and Smt.Neema T.V., the learned Public Prosecutor.

4. The learned counsel for the petitioner submitted

that the petitioner is totally innocent of the accusations leveled against him. He has been falsely implicated in the crime. A reading of Annexure A1 First Information Report would substantiate that the offences alleged against the

petitioner will not be attracted. In any given case, the petitioner has been in judicial custody for the last one month, the investigation in the case is complete and recovery has been effected. Moreover, the petitioner does not have criminal antecedents. Therefore, the petitioner's further detention is unnecessary. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the

application. She submitted that the investigation in the case is in progress. She further stated that if the petitioner is released on bail, there is every likelihood of him committing similar offences. Hence, the application may be dismissed.

6. The prosecution allegation against the petitioner is

that he induced the defacto complainant to pay an amount of Rs.3,15,000/- on the promise that he would return the money to the defacto complainant. However, the accused failed to return the money to the defacto complainant. The fact remains that the petitioner has been in judicial custody for the last one month, the investigation in the case is complete and recovery has been effected.

7. In *Sanjay Chandra v. CBI*, [2012 1 SCC 40], the

Honourable Supreme Court has categorically held that the fundamental postulate of criminal jurisprudence is the presumption of innocence, until a person is found guilty. Any imprisonment prior to conviction is to be considered as punitive and it would be improper on the part of the Court to refuse bail solely on the ground of former conduct.

8. In *Dataram Singh v. State of U.P.*, [(2018) 3 SCC

22] the Honourable Supreme Court observed that grant of bail is the rule and putting a person in jail is an exception. Even though the grant of bail is entirely the discretion of the court, it has to be evaluated based on the facts and circumstances of each case and the discretion has to be exercised in a judicious and compassionate manner.

9. In *State of Kerala v. Raneef*, [(2011) 1 SCC 784],

the Honourable Supreme Court has declared that undertrial prisoners detained in jail for indefinite periods, without any sufficient reason or due to the delay in concluding the trial, will tantamount to infringement of their right to life guaranteed under Article 21 of the Constitution.

10. In *Hussainara Khatoon (I) v. Home Secy.*,

State of Bihar [(1980) 1 SCC 81], the Honourable Supreme Court while dealing with a case of under trials, who suffered long incarceration, held that the procedure that keeps large number of people behind the bars without trial for long is unreasonable and unfair, and is not in conformity with the mandate of Article 21 of the Constitution of India.

11. The principle that bail is the rule and jail is an

exception is on the touch stone of Article 21 of the Constitution of India. Once the charge sheet is filed, a strong case has to be made out for continuing a person in judicial custody. The right to bail cannot be denied merely due to the sentiments of the society.

12. On an overall consideration of the facts, the rival

submissions made across the Bar and the materials placed on record, particularly taking note of the fact that the petitioner has been in judicial custody for the last one month, the investigation in the case is practically complete, the recovery has been effected and further that the petitioner does not have any criminal antecedents, I am of the view that the petitioner's further detention is unnecessary. Hence, I am inclined to allow the application. In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

(i) The petitioner shall appear before the

Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is filed. He shall also appear before the Investigating Officer as and when required;

(ii) The petitioner shall not directly or indirectly

make any inducement, threat or procure to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;

(iii) The petitioner shall not commit any offence while he is on bail;

(iv) The petitioner shall surrender his passport, if

any, before the court below at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the court below on the date of execution of the bond;

(v) In case of violation of any of the conditions

mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

(vi) Applications for deletion/modification of the bail conditions shall be moved and entertained by the court below.

(vii) Needless to mention, it would be well within

the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in *Sushila Aggarwal v. State (NCT of Delhi)* and another [2020

(1) KHC 663].

sd/- C.S.DIAS, JUDGE rkc/23.04.24 APPENDIX OF BAIL APPL. 3228/2024
PETITIONER ANNEXURES Annexure A1 TRUE COPY OF THE FIR NO 14 OF

2024 DATED 17-3-2024 OF CYBER CRIME POLICE STATION, THRISSUR
RURAL Annexure A2 CERTIFIED COPY OF THE ORDER IN CRL.M.P. NO. 2468
OF 2024 DATED 2-4-2024 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, IRINJALAKUDA

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