

Azeez M vs State of Kerala

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Court : Kerala

Decided On : Jun-06-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./4549/2024

Appellant : Azeez M

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY,
THE 6TH DAY OF JUNE 2024 / 16TH JYAISHTA, 1946 CRIME
NO.144/2024 OF Bekal Police Station, Kasargod -----
PETITIONER/ACCUSED :- AZEEZ M, AGED 31 YEARS S/O.
KUNHIMON, MOYIKKAL HOUSE, FAROOQPALLIOTTUMBURAM,
PERIYAPURAM VILLAGE, THANOOR, MALAPPURAM, PIN - 676 302
BY ADV C.K.SREEJITH RESPONDENT/COMPLAINANT :- STATE OF
KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, PIN - 682 031 BY SRI.C.S.HRITHWIK, SR.PP THIS BAIL
APPLICATION HAVING COME UP FOR ADMISSION ON 06.06.2024,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -: 2

:-

ORDER

Dated this the 6th day of June, 2024 The application is filed under Section 439 of the Code

of Criminal Procedure, 1973, by the third accused in Crime No.144/2024 of the Bekal Police Station, Kasaragod, registered against the accused for allegedly committing the offences punishable under Section 420 of the Indian Penal Code and Section 66D of the Information Technology (Amendment) Act, 2008. The petitioner was arrested on 05.05.2024.

2. The gist of the prosecution case is that; between

the period from 08.01.2024 to 06.02.2024, the accused, in furtherance of their common intention, had induced the de facto complainant through a Whatsapp group named Jonathan Simon Institutional Stratagical Centre and made him to invest an amount of Rs.31,92,785/- on the assurance of paying profit. But, the accused did not pay any profit or return the capital. Thus, the accused have committed the above offences.

-: 3 :-

3. Heard; Sri.C.K.Sreejith, the learned counsel appearing for the petitioner and Sri.C.S.Hrithwik, the learned Public Prosecutor 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. He has been falsely implicated in the crime. There is no material to show that the petitioner has received any money from the de facto complainant. The offence under Section 420 cannot be attributed against the petitioner. In any given case, the petitioner has been in judicial custody for the last one month, the investigation in the case is practically complete and recovery has been effected. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the

application. He submitted that the investigation is in progress. He stated that the petitioner and other accused have committed grave economic offence against the de facto complainant. If the petitioner is released on bail, -: 4 :- there is a likelihood of him interfering with the investigation. Hence, the application may be dismissed. Nonetheless, he did not dispute the fact that the petitioner does not have criminal antecedents.

6. On an evaluation of the materials recorded, it can

be deciphered that the prosecution allegation is that the petitioner and the other accused induced the de facto complainant to invest money with them on the assurance of giving them profit. However, the accused misappropriated the money and did not return the same. The fact remains that the petitioner has been in judicial custody since the last one month, the investigation in the case is practically 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 -: 5 :- 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. The principle that bail is the rule and jail is an

exception is 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.

10. On an anxious consideration of the facts, the rival submissions made across the Bar, and the materials placed :- 6 :-

on record, especially on considering the fact that the petitioner has been in judicial custody for the last 30 days, the investigation in the case is complete, recovery has been effected and further, the petitioner does not have criminal antecedents, I am of the definite view that the petitioner is entitled to be released on bail. Hence, I am inclined to allow the bail application, but subject to conditions.

In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.50,000/- (Rupees fifty thousand 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 laid. 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 :- 7 :-

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 -: 8 :- 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 Jvt/6.6.2024 -: 9 :- APPENDIX OF BAIL APPL. 4549/2024 PETITIONER ANNEXURES :- Annexure A1 THE TRUE COPY OF THE FIR IN CRIME NO.144/2024 ON THE FILE OF BEKAL POLICE STATION, KASARAGODEDT.14/3/2024 Annexure A2 THE TRUE COPY OF THE ORDER PASSED IN CMP. NO. STATIONDT. 22/5/2024

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