

Safeel, vs State of Kerala,

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Court : Kerala

Decided On : Aug-07-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./5073/2024

Appellant : Safeel,

Respondent : State of Kerala,

Judgement :

-:1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY,
THE 7TH DAY OF AUGUST 2024 / 16TH SRAVANA, 1946 BAIL APPL.
NO. 5073 OF 2024 CRIME NO.386/2024 OF ETTUMANOOR POLICE
STATION, KOTTAYAM PETITIONER: SAFEEL, AGED 37 YEARS S/O.
HAIDER, RESIDING AT ENINTEPURAKKAL,
PANDARAKKADAPPURAM, TANUR, PANANGATTUR,
MALAPPURAM, PIN - 676302

BY ADVS.C.K.SREEJITH RAJESH P. RESPONDENT: STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN -

682031 OTHER PRESENT: SR PP SMT SEETHA S THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -:2:- Dated this the 6th day of August, 2024

ORDER

The application is filed under Section 438 of the Code of Criminal Procedure, 1973(Code, for the sake of brevity), for an order of pre-arrest bail. 2.The petitioner is the seventh accused in Crime No.386/2024 of the Ettumanoor Police Station, Kottayam, which is registered against the accused for allegedly committing the offences punishable under Sections 420 & 406 of the Indian Penal Code, 1860. 3.The crux of the prosecution case is that; the accused, in furtherance of their common intention, had induced the de-facto complainants relative(victim) to download a mobile application and made him transfer Rs.2,10,000/- to their account on the assurance that they would give him good profit. However, the accused did not give any profit or return the capital. -:3:- Thus, the accused have committed the above offences. 4.Sri. C.K. Sreejith, the learned counsel appearing for the petitioner and Smt. Seetha S., the learned Senior Public Prosecutor. 5.The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. A reading of Annexure-A1 First Information Report[FIR] would show that there is no specific overt act alleged against the petitioner. The petitioner is a law abiding citizen without any criminal antecedents. The petitioners custodial interrogation is not necessary, and no recovery is to be effected. Hence, the application may be allowed. 6.The learned Public Prosecutor opposed the application. The Investigating officer has filed a bail objection report, inter-alia, contending that the -:4:- accused had induced the victim to invest money with them on the assurance of paying profit. Accordingly, the victim had transferred Rs.2,10,000/- to the accused, who failed to pay any profit or return the capital. The specific allegation against the petitioner is that the other accused had transferred the proceeds of the crime to the bank account of the petitioner.

7. In Jai Prakash Singh v. State of Bihar and another [(2012) 4 SCC 379], the Honble Supreme Court has held that, an order of pre-arrest bail being an extra

ordinary privilege, should be

granted only in exceptional cases. The judicial discretion conferred upon the Courts has to be properly exercised, after proper application of mind, to decide whether it is a fit case to grant an order of pre-arrest bail. The court has to be prima-facie satisfied that the applicant has been falsely enroped in -:5:- the crime and his liberty is being misused. 8. On an anxious consideration of the facts, rival submissions made across the Bar, and the materials placed on record, and particularly on considering the fact that there are prima facie materials to substantiate the petitioner's involvement in the crime, the petitioners custodial interrogation is necessary, and the recovery is to be effected, I am not satisfied that the petitioner has made out any cogent grounds to invoke the discretionary jurisdiction of this Court under Section 438 of the Code. Hence, I am not inclined to entertain the bail application. Resultantly, the bail application is dismissed. Nonetheless, I direct that, if the petitioner surrenders before the Investigating Officer within one week from today, he shall be interrogated and, thereafter, be produced before the jurisdictional Court -:6:-

on the date of surrender itself. Then, if the petitioner moves an application for bail, the jurisdictional Court shall, consider the bail application on its merits. 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 the case.

Sd/- C.S.DIAS, JUDGE DST/07.08.24 //True copy// P.A. To Judge

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