

Noushad a vs State of Kerala

Noushad a vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1343581

Court : Kerala Orders

Decided On : Apr-11-2023

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : Bail Appl./1968/2023

Appellant : Noushad a

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
TUESDAY, THE 11TH DAY OF APRIL 2023 / 21ST CHAITHRA, 1945
BAIL APPL. NO. 1968 OF 2023 CRIME NO.49/2023 OF Edakkad Police
Station, Kannur PETITIONER/PETITIONER NO 1 AND 2: 1 NOUSHAD
A AGED 47 YEARS S/O ABDULLA, ANNAN HOUSE, OLATTUVAYAL,
ATHAZHAKUNNU, KOTTALI P.O, KANNUR, PIN - 670005 2 KAMILA
AGED 40 YEARS W/O NOUSHAD A, ANNAN HOUSE, OLATTUVAYAL,
ATHAZHAKUNNU, KOTTALI P.O, KANNUR, PIN - 670005 BY ADVS.
RAHUL SASI NEETHU PREM MANU K. MURALI
RESPONDENTS/STATE AND DEFACTO COMPLAINANT: 1 STATE OF
KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT

OF KERALA, PIN - 682031 2 KAFILA AGED 40 YEARS W/O BASHEER, ADOORPALAM, KADACHIRA P.O,KANNUR, PIN - BY ADVS. ABDUL RAOOF PALLIPATH K.R.AVINASH (KUNNATH)(K/1364/2003) PRAJIT RATNAKARAN(K/497/1995) THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11.04.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This is an application filed under Section 438 of the Code of Criminal Procedure seeking pre-arrest bail.

2. The petitioners are husband and wife. They are

implicated as accused Nos. 1 and 2 in Crime No. 49/2023 of Edakkad Police Station, which was registered for the offences punishable under Sections 406, 419, 420, 465 read with Section 34 of the Indian Penal Code.

3. The aforesaid crime was registered based on a

complaint submitted by the twin sister of the 2nd respondent with the following allegations: During the period from 27.01.2021 to 09.03.2022, the petitioners along with the 3 rd accused, who is an Engineer of a private firm engaged in construction activities,

committed criminal breach of trust and cheating. The specific allegation against the petitioners is that, the defacto complainant entrusted the matters relating to the construction of a residential building for her with them. While carrying out the constructions, the petitioners collected 8 sovereigns of gold ornaments for the

said purpose. But later, the same was misappropriated by them without utilizing the funds for the purpose of construction of the house of the defacto complainant. Apart from the above, the petitioners have also obtained the original title deed of the property of the defacto complainant, and later, the said document was deposited before the Kerala State Co-Operative Bank, Edakkad Branch on 22.04.2022, for creating an equitable mortgage over the property of the defacto

complainant, by executing a document with the forged signature of the defacto complainant. It is also alleged that the 2 nd petitioner had impersonated the defacto complainant, taking advantage of the fact that, she is the identical twin sister of the defacto complainant, and thereby the documents were executed and availed a credit facility of Rs. 21 lakhs. The crime was registered in such circumstances. This application is submitted seeking anticipatory bail as the petitioners apprehend arrest in connection with the investigation of the said case.

4. Heard Sri.Rahul Sasi, the learned counsel appearing for the petitioner and Sri. C.S Hrithwik, the learend Public Prosecutor appearing for the State and Sri. Prajit Retnakaran, the learned counsel appearing for the 2nd respondent/defacto complainant.

5. The learned counsel for the petitioner contends that the

petitioners are innocent of all the allegations. According to him, all the aforesaid transactions, which are the subject matter of the crime were done with the knowledge and consent of the defacto complainant and the allegation of impersonation and forgery were denied by the petitioners. The learned counsel for the petitioners submits that they are prepared to abide by any conditions that may be imposed by this Court and are also willing to cooperate with the investigation.

6. On the other hand, the learned Public Prosecutor and the learned counsel appearing for the defacto complainant would oppose the prayer sought by the petitioners. It is pointed out that, the allegations against the petitioners are relating to the

commission of forgery through impersonation. Interrogation of the petitioners is necessary as the recovery of the documents and the gold ornaments misappropriated by the petitioners are to be affected. Therefore, if the petitioners were granted anticipatory bail, it would hamper the prospects of investigation and hence they seek for dismissal of the application.

7. I have gone through the records and heard the

contentions raised by all the parties concerned. As rightly pointed out by the learned Public Prosecutor and the learned counsel appearing for the defacto complainant, the statement of the defacto complainant contains materials which would prima facie

attract the offences against the petitioners. The allegation includes the creation of forged documents and presenting the same before the Bank to avail a credit facility, by impersonation. Considering the nature of allegations, I am of the view that, the release of the petitioner by granting anticipatory bail is likely to affect the investigation adversely. This is mainly because of the fact that, as rightly pointed out by the learned Public Prosecutor, recovery of the documents and the gold ornaments are to be affected.

In such circumstances, taking into account the serious nature of the allegations and also the necessity of interrogation of the petitioners, I do not find this as a fit case in which anticipatory bail can be granted. Therefore, I do not find any merits in this application, and accordingly it is dismissed. Sd/- ZIYAD RAHMAN A.A JUDGE rpk APPENDIX OF BAIL APPL. 1968/2023 PETITIONER ANNEXURES Annexure A1 THE CITIZEN COPY OF THE FIR IN CRIME NO. 49 OF 2023 DATED 18.01.2023 Annexure A2 THE PHOTOCOPY OF THE ORDER DATED 06.02.2023 IN CRL. M.C NO. 164 OF 2023 ON THE FILES OF THE COURT OF SESSIONS, THALASSERY

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com