

Moorthi S. vs State of Kerala Represented by Public Prosecutor

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Court : Kerala

Decided On : Mar-28-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./2971/2022

Appellant : Moorthi S.

Respondent : State of Kerala Represented by Public Prosecutor

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN TUESDAY,
THE 28TH DAY OF MARCH 2023 / 7TH CHAITHRA, 1945 BAIL APPL. NO. 2971
OF 2022 CRIME NO.279/2022 OF RAJAKKAD POLICE STATION, IDUKKI
PETITIONERS/ACCUSED:

1 MOORTHY S. AGED 31 YEARS, S/O SINGATHEVAR, PARACKAL
HOUSE, BISONVALLEY POST & VILLAGE, 2 ASHA AGED 31 YEARS,
W/O MOORTHY, PARACKAL HOUSE, BISONVALLEY POST &
VILLAGE, 3 PECHIYAMMA AGED 62 YEARS, W/O SINGATHEVAR,
PARACKAL HOUSE, BISONVALLEY POST & VILLAGE, 4 SINDHU
AGED 27 YEARS, W/O PALANIKUMAR, KUNNUMPURATH HOUSE,

BISONVALLEY POST & VILLAGE, BY ADVS. S.JIJI M.M.BABY

RESPONDENTS/STATE SHO & DEFACTO COMPLAINANT:

1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 THE
STATION HOUSE OFFICER RAJAKKAD POLICE STATION,
RAJAKKAD POST & VILLAGE, IDUKKI DISTRICT, PIN - 685566 3
VISHNUVEL AGED 40 YEARS, S/O RAJKUMAR, 70 G,
SREEVENKITAM HOUSE, 2ND CROSS STREET, SATHYASAI
NAGAR, RAMUKILPAKKAM CHENNAI, PIN - 600040 BY ADV
JAYARAM P T V NEEMA - SR PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28.03.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 28th day of March, 2023 This is a petition filed under Section 438 of the Code of Criminal Procedure, seeking pre-arrest bail and the petitioners are accused Nos. 1 to 4 in crime No.279/2022 of Rajakkad Police Station, Idukki.

2. Heard the learned counsel for the petitioners as well as

the learned Public Prosecutor and the learned counsel appearing for the defacto complainant. Perused the relevant materials form part of the case diary produced by the learned Public Prosecutor.

3. In this case, the prosecution allegation is that, the

defacto complainant herein who owns cardamom estate in Udumbanchola Taluk, Idukki District, entrusted the management of the said cardamom cultivation to the 1st accused herein. Thereafter, it was informed by the 1st accused that, somebody stolen away 700 kilogram of elachi, 300 kilogram of black pepper, poison spraying machine, gas

cylinder, stove and the vessels kept and used in the estate worth Rs.10,00,000/-. The defacto complainant who was in Chennai reached the place and made attempts to launch complaint regarding theft and thereafter the 1st accused conceded that, he along with the other accused have stolen away the above articles and he agreed to give its value. Thus, crime alleging commission of offences punishable under Sections 380, 381, 403, 406, 408 and 420 r/w 34 of IPC was registered when the defacto complainant lodged a private complaint before the Judicial First Class Magistrate Court, Adimaly.

4. The learned counsel for the petitioners would submit

that the petitioners are innocent and the allegations are false. According to the learned counsel for the petitioners, the complaint was lodged at a much belated stage and therefore the same would require detailed investigation to prove the innocence of the accused. Highlighting the delay in lodging the complaint, the learned counsel for the petitioners pursued the relief of anticipatory bail.

5. The learned Public Prosecutor as well as the learned

counsel appearing for the defacto complainant zealously opposed grant of anticipatory bail to the accused. It is submitted that, the 1st accused herein agreed to give Rs.22,50,000/- towards the value of elachi and black pepper etc. by executing an agreement dated 30.12.2021. Therefore, the prosecution case is well made out prima facie. In such a case, anticipatory bail cannot be granted to the accused.

6. On perusal of the prosecution records, as early on

25.01.2022, the defacto complainant lodged a complaint before the Superintendent of Police, Idukki, alleging that the 1 st accused sold elachi and pepper for Rs.22,50,000/-. Thereafter, the 1 st accused executed an agreement to repay Rs.22,50,000/- by instalments viz.

Rs.8,00,000/- on 20.01.2022, Rs.5,00,000/- on 20.02.2022 and balance Rs.9,50,000/- on 20.06.2022. Since the 1st accused failed to pay the money as agreed, a private complaint was lodged by the defacto complainant and crime was registered. The copy of the said agreement and the complaint filed by the defacto complainant before the Superintendent of Police, Idukki along with the note written by the Superintendent of Police, Idukki have been placed by the learned Public Prosecutor.

7. Therefore, in so far as the 1st petitioner/1st accused is

concerned, the allegations are justified by the agreement and the complaint filed by the defacto complainant. Though as on 09.03.2022, much after the expiry of the time for payment referred in the agreement, mother of the 1 st accused filed a complaint before the Sub Inspector of Police, Rajakkad, and the same has no much significance, since the said complaint can be read only as an afterthought reaction.

8. On perusal of the records available as discussed herein

above, it is crystal clear that, the 1 st accused has role in this occurrence and therefore he is not liable to be released on anticipatory bail, since his arrest and custodial interrogation are absolutely necessary. At the same time, it could be gathered that, the role of other accused in this crime is much less. Therefore, arrest and custodial interrogation of accused Nos. 2 to 4/petitioners 2 to 4 are not necessary.

9. Holding so, anticipatory bail plea at the instance of the

1st accused/1st petitioner stands dismissed, while allowing bail plea at the instance of accused Nos.2 to 4/petitioners Nos. 2 to 4. Accordingly, accused Nos. 2 to 4/petitioners Nos. 2 to 4 are enlarged on bail on conditions: i. Accused Nos. 2 to 4/petitioners Nos. 2 to 4 shall surrender before the Investigating Officer within ten days from today and on such

surrender, the Investigating Officer can question petitioners Nos. 2 to 4 and record their statements, if necessary. In the event of their arrest, the Investigating Officer shall produce petitioners Nos. 2 to 4 before the Jurisdictional Court on the date of arrest itself. ii. On such production, Jurisdictional Court shall release petitioners Nos. 2 to 4 on bail, on executing bond for Rs.30,000/- (Rupees Thirty thousand) each, by themselves and by two sureties, each for the like sum to the satisfaction of the Jurisdictional Court. iii. Accused Nos. 2 to 4/petitioners Nos. 2 to 4 shall co-operate with investigation and shall be made available for interrogation and for the purpose of investigation, as and when the Investigating Officer directs so. iv. Accused Nos. 2 to 4/petitioners Nos. 2 to 4, shall not, intimidate the witnesses or interfere with the investigation in any manner. v. Accused Nos. 2 to 4/petitioners Nos. 2 to 4 shall not commit any offence during currency of this bail and any such involvement is a reason to cancel the bail hereby granted. Sd/- A. BADHARUDEEN

SK JUDGE

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