

Kasim vs State of Kerala

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Court : Kerala Orders

Decided On : Jun-26-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Bail Appl./3650/2023

Appellant : KASIM

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS
MONDAY, THE 26TH DAY OF JUNE 2023 / 5TH ASHADHA, 1945 BAIL APPL.
NO. 3650 OF 2023 IN CRIME NO.399/2023 OF FORT KOCHI POLICE STATION,
ERNAKULAM PETITIONERS/ACCUSED NOS.3 & 6: 1 KASIM AGED 38 YEARS
S/O ZAKARIA, MATTANCHERRY, ERNAKULAM, PIN - 682002 2 ANEESH
AGED 39 YEARS S/O MOOSA HAMSAKKUTTY, MATTANCHERRY,
ERNAKULAM, PIN - 682002 BY ADVS. C.Y.VINOD KUMAR C.ANILKUMAR
(KALLESSERIL) P.M.MANASH RESPONDENTS/COMPLAINANT &
INVESTIGATING OFFICER: 1 STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 THE STATION
HOUSE OFFICER MATTANCHERRY POLICE STATION, MATTANCHERRY,

ERNAKULAM, PIN - 682002 BY ADV SREEJA V PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

===== Dated this the 26th day of June, 2023

ORDER

This is an application seeking pre-arrest bail filed under Section 438 of the Code of Criminal Procedure, 1973.

2. Petitioners are accused Nos. 3 and 6 in Crime No.399/2023 of Fort Kochi Police Station, Ernakulam District, alleging offences punishable under Sections 454, 461 and 380 of the Indian Penal Code, 1860.

3. According to the prosecution, on 26.03.2023, when the

defacato complainant had gone to a Church along with his family, the accused trespassed into the house and committed theft of an amount of Rs.25,00,000/- and gold ornaments worth Rs.2,85,000/- and thereby committed the offences alleged.

4. Sri. C.Anilkumar, the learned counsel for the petitioners

vehemently contended that, the prosecution allegations even if assumed to be accepted for the sake of arguments, would still not make out any non bailable offence as against the petitioners. It was further submitted that, petitioners are attempted to be roped in alleging conspiracy and considering the nature of allegations against

them, the offence can only fall under Section 120B(2) which is a bailable offence and hence, petitioners are entitled to be released on

bail immediately on their arrest. According to the learned Counsel, since petitioners have been falsely roped in as accused in a non bailable offence, they

apprehend arrest. The learned counsel further pointed out that, there is nothing to implicate petitioners in the crime, and that they are being unnecessarily proceeded against.

5. Smt. Sreeja.V, on the other hand contended that, accused 1

and 2 had broken open the door of the defacto complainants house and committed theft of large amount of money and gold ornaments. The involvement of remaining accused are evident and that petitioners along with the 1st accused had even absconded and the remaining stolen articles can be recovered only through custodial interrogation of the petitioners. It was also submitted that, petitioners are involved in several crimes with 1st petitioner is involved in two other crimes, while the 2nd petitioner is involved in five other crimes and therefore, anticipatory bail ought not to be granted.

6. I have considered the rival contentions.

7. The allegations against the petitioners are serious. 3 rd

accused (1st petitioner) is the brother of the 4 th accused. They are alleged to have conspired to commit theft of valuables from the defacto complainants house. Based upon the said conspiracy, 1 st and 2nd accused had trespassed into the house and allegedly stole Rs. 25,00,000/- in money and gold ornaments worth Rs.2,85,000/-.

8. The contention based on Section 120B(2) of I.P.C. though

impressive cannot have any application, atleast prima facie. The conspiracy alleged is for the commission of the offences under Sections 454, 461 and 380 of I.P.C and hence, it can only be Section 120B(1) I.P.C. that will apply.

9. Considering the nature of allegations against the petitioners,

custodial interrogation is essential. Further the criminal antecedents of the petitioners are also not honourable and therefore, they cannot be released on anticipatory bail. Accordingly, this bail application is dismissed. BECHU KURIAN THOMAS JUDGE jka/26.06.23.

