

Nitha vs State of Kerala

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Court : Kerala

Decided On : May-31-2023

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

Appeal No. : Bail Appl./4021/2023

Appellant : NITHA

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945
BAIL APPL. NO. 4021 OF 2023 (Crime No.155/2023 of Chittur Police
Station) PETITIONER/ACCUSED NO 2 TO 4: NITHA AGED 32 YEARS
W/O.LOKESH PANKAJAKSHAN, KARAKKAD HOUSE,
KIZHAKKUMURI, ELAVANCHERRY, CHITTUR TALUK, PALAKKAD
DISTRICT., PIN - BY ADV NIREESH MATHEW
RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED
BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031
BY ADV PUBLIC PROSECUTOR OTHER PRESENT: ADV SEETHA S -
SR PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION

ON 31.05.2023, 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 anticipatory bail.

2. The petitioner is the accused in Crime No.155/2023 of Chittur Police Station, which was registered for the offence punishable under Section 420 of the Indian Penal Code.

3. The prosecution case is as follows: The accused is the

wife of one Lokeshan, who is running a business in Mosambic in Africa. The defacto complainant is a retired employee, and it is alleged that by making the defacto complainant believe that, if she invests money in the business conducted by her husband, the defacto complainant will get a good share of profit every month,

persuaded her to invest an amount of Rs.35,00,000/-. The defacto complainant transferred the aforesaid amount to the petitioner through cheques. Later, the accused neither gave any share of the profit nor returned the amount as promised. The crime was registered in such circumstances. The petitioner submits this application for anticipatory bail as she apprehends arrest in connection with the investigation of the said case.

4. Heard, Sri.Nireesh Mathew, the learned counsel appearing for the petitioner and Smt.Seetha.S., the learned Senior Public Prosecutor for the State.

5. The learned counsel for the petitioner submits that the

allegations raised against the petitioner are false. According to him, the alleged payment made, was part of a business investment. In the FIS itself, it is submitted by the defacto complainant that, during the initial period, she was given the returns. As of now, the defacto complainant admittedly received an amount of

Rs.6,35,000/- towards the profit and interest. Therefore, it is pointed out that there is nothing to indicate any criminal intention on the part of the petitioner to cheat the defacto complainant, as all the said investments were for the purpose of business. At the most, it may attract some civil liability, and no culpability could be attributed to the said transactions, contends the learned counsel for the petitioner.

6. On the other hand, the learned public prosecutor would oppose the aforesaid contention by pointing out that there are specific allegations against the petitioner and the matter is under

investigation. It is further pointed out that the petitioner is also implicated as an accused in Crime No.158/2023 for the offences punishable under Section 420 read with Section 34 of the Indian Penal Code based on the complaint submitted by one Vijayalakshmi. The aforesaid matter is also pending investigation.

7. In response to the aforesaid averment, the learned

counsel submits that, as far as Crime No. 158/2023 is concerned, the same was submitted by the sister of the defacto complainant herein and both these complaints were registered simultaneously. It is also pointed out that the petitioner is already granted anticipatory bail in the aforesaid case by the order passed by the Sessions Court.

8. I have gone through the records and heard the

contentions raised by both sides. The FI Statement indeed contains the allegation of cheating against the petitioner. At the same time, as rightly pointed out by the learned counsel for the petitioner, there is an admission in the said statement to the effect that initially, the defacto complainant was given various amounts totaling Rs. 6,35,000/- as a share of profit. The contention put

forward by the learned counsel for the petitioner is that, since the transaction made was in the nature of a business investment, at the most, it could attract only civil liability and not any criminal offences. Considering the entire materials placed before me, I am of the view that the possibility of the same cannot be simply brushed aside. Anyway, this is a matter to be investigated further, but, considering

the aforesaid aspect, I am of the view that, some orders to protect the personal liberty of the petitioner are to be passed by ensuring her cooperation with the investigation. In the

facts and circumstances of the case, I do not find any necessity for

custodial interrogation of the petitioner. In such circumstances, this application is disposed of with the following conditions; i) The petitioner shall surrender before the Investigating Officer, within a period of two weeks from today, for subjecting herself to interrogation. ii) After interrogation, the petitioner shall be released on

bail on the very same day of surrender upon the petitioner executing a bond for Rs 1,00,000/- (Rupees One Lakh only) with two sureties each for the like sum, to the satisfaction of the Investigating Officer iii) The petitioner shall fully cooperate with the investigation, including subjecting herself to the deemed police custody for the purpose of recovery, if any, as and when demanded.

iv) The petitioner shall appear before the Investigating Officer between 10.00 a.m and 11.00 a.m every Saturday until the filing of the final report. v) The petitioner shall also appear before the Investigating Officer as and when required by him. vi) The petitioner shall not commit any offence of like nature while on bail. vii) The petitioner shall not make any attempt to contact

any of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation. viii) The petitioner shall not leave the State of Kerala without the permission of the Jurisdictional Court. In case of violation of any of the above conditions, the jurisdictional Magistrate shall be empowered to consider the application for cancellation of bail, if any, and pass appropriate orders in accordance with the law.

Sd/- ZIYAD RAHMAN A.A JUDGE rpk APPENDIX OF BAIL APPL. 4021/2023
PETITIONER ANNEXURES Annexure1 TRUE PHOTOCOPY OF THE F.I.
STATEMENT DATED 17.02.2023 Annexure2 CITIZEN COPY OF THE FIRST

INFORMATION REPORT IN CRIME NO. 155/2023 OF CHITTUR POLICE STATION, PALAKKAD DISTRICT DATED 17.02.2023 Annexure3 TRUE PHOTOCOPY OF THE MINUTES OF THE GENERAL MEETING OF THE COMPANY DATED 07.11.2019 IN PORTUGUESE LANGUAGE Annexure-A3(a) TRUE ENGLISH TRANSLATION OF ANNEXURE-3 Annexure-4 TRUE PHOTOCOPY OF THE ORDER DATED 04.05.2023 IN CRL.MC.NO.1377/2023 PASSED BY THE ADDL. SESSIONS JUDGE-I, PALAKKAD. Annexure-5 TRUE PHOTOCOPY OF THE NOTICE UNDER SECTION 41A(1) OF CR.P.C ISSUED TO THE PETITIONER DATED 20.03.2023 Annexure-6 FREE COPY OF THE ORDER DATED 16.05.2023 IN CRL.MC.NO.1376/2023 PASSED BY THE ADDL. SESSIONS JUDGE-III, PALAKKAD

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