

Hariz vs State of Kerala

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Court : Kerala Orders

Decided On : Jun-30-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Bail Appl./4781/2023

Appellant : HARIZ

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 30TH DAY OF JUNE 2023 / 9TH ASHADHA, 1945 CRIME NO.399/2023 OF Fort Kochi Police Station, Ernakulam PETITIONER/ 1ST ACCUSED : HARIZ, AGED 38 YEARS, S/O ESSAK, 4/510 A, KARIPALAM, ODATHAPARAMBU, FORT KOCHI, ERNAKULAM, PIN - 680 001 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 - 682 031 2 THE STATION HOUSE

OFFICER, FORT KOCHI POLICE STATION, FORT KOCHI, ERNAKULAM, PIN - 680 001 BY SMT.SREEJA V., PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

B.A.No.4781 of 2023 Dated this the 30th 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. Petitioner is the first accused 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 petitioner

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 petitioner. It was further submitted that, petitioner has been roped as accused alleging conspiracy and considering the nature of allegations against him, the offence can only fall under Section 120B(2) which is a bailable offence and hence, petitioner is entitled to be released on bail, immediately on his arrest. According to the learned Counsel, since petitioner has been falsely roped in as accused in a non-bailable offence, he apprehend arrest. The learned counsel further pointed out that, there is nothing to implicate petitioner in the crime, and

that he is 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 a large amount of money and gold ornaments. The involvement of accused other than accused 1 and 2 are evident and that accused along with the petitioner herein had even absconded and the remaining stolen articles can be recovered only through custodial interrogation of the petitioner. It was also submitted that, petitioner is involved in several crimes and therefore, anticipatory bail ought not to be granted.

6. I have considered the rival contentions.

7. The allegations against the petitioner are serious. 3rd accused (1st petitioner) is the brother of the 4th accused. They are alleged to have conspired to commit theft of valuables from the defacto complainants house. Based upon the said conspiracy, 1st 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 petitioner,

custodial interrogation is essential. Further the criminal antecedents of the petitioner are also not honourable and therefore, he cannot be released on anticipatory bail. Accordingly, this bail application is dismissed. BECHU KURIAN THOMAS, JUDGE RKM

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