

Sabith vs State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1375318

Court : Kerala

Decided On : Oct-09-2023

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : Bail Appl./5934/2023

Appellant : Sabith

Respondent : State of Kerala

Judgement :

BAIL APPL. NO. 5910 OF 2023 CRIME NO.645/2023 OF BADAGARA POLICE STATION, KOZHIKODE DISTRICT PETITIONER/2ND ACCUSED: ARAFA MAHAL(H), VILLIAPALLI, KEEZHAL P.O, VADAKARA, KOZHIKODE., PIN - 673 104. RESPONDENTS/STATE:

REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682 031. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE, PIN - 673 101. 3 SUBAIDA K K. AGED 57 YEARS, W/O. MOIDU, KALARIKANDI HOUSE, CHORODE EAST, CHORODE P.O, VADAKARA, KOZHIKODE, PIN - 673 106. 4 SAFEEDHA W/O. NOT KNOWN, AGE NOT KNOWN, KALARIKANDI HOUSE, CHORODE EAST, CHORODE P.O, VADAKARA, KOZHIKODE, PIN - 673 106. BY ADV. SRI VIPIN NARAYAN (SR PP)

09.10.2023, ALONG WITH Bail Appl..5930/2023, 5934/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

B.A.Nos.5910 of 2023 & Conn. cases 2 BAIL APPL. NO. 5930 OF 2023 CRIME NO.646/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/1ST ACCUSED: VADAKARA, KOZHIKODE, PIN - 673 104. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE, 3 ASEES K AGED 48 YEARS, S/O. KUNHABDHULLA, KOMMILOTH(H), CHEMMARATHUR, VADAKARA, KOZHIKODE, PIN - 673 104. BY ADV. NOUSHAD K.A (SR.PP)

B.A.Nos.5910 of 2023 & Conn. cases 3 BAIL APPL. NO. 5934 OF 2023 CRIME NO.647/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/2ND ACCUSED: VADAKARA, KOZHIKODE., PIN - 673 104. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE, 3 MUNEER K AGED 45 YEARS, S/O. KUNHABDHULLA, KOMMILOTH(H), CHEMMARATHUR, VADAKARA, KOZHIKODE., PIN - 673 104. BY ADV.G. SUDHEER (PP)

B.A.Nos.5910 of 2023 & Conn. cases 4 BAIL APPL. NO. 5936 OF 2023 CRIME NO.648/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/2ND ACCUSED: VADAKARA, KOZHIKODE, PIN - 673 104. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE, 3 IBRAHIM AGED 80 YEARS, S/O. ABDHULLA HAJI, KODAKKATTU HOUSE, PULIYAVU P.O, VADAKARA, KOZHIKODE, PIN - 673 509. BY ADV. G. SUDHEER (PP)

B.A.Nos.5910 of 2023 & Conn. cases 5 BAIL APPL. NO. 5939 OF 2023 CRIME NO.649/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/2ND ACCUSED: VADAKARA, KOZHIKODE., PIN - 673 104. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE, 3 RASIYA AGED 38 YEARS, W/O. NOT KNOWN, CHALIL(H), PATHIYARAKKARA P.O, VADAKARA, KOZHIKODE, PIN - 673 105. BY ADV. NOUSHAD K.A (SR.PP)

B.A.Nos.5910 of 2023 & Conn. cases 6 BAIL APPL. NO. 5940 OF 2023 CRIME NO.650/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/1ST ACCUSED: VADAKARA, KOZHIKODE, PIN - 673 104. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE, 3 SHAHIDA W/O. RASHEED, NADAKKAL(H), PERODE P.O., VADAKARA, KOZHIKODE, PIN - 673 504. BY ADV. NOUSHAD K.A. (SR.PP) B.A.Nos.5910 of 2023 & Conn.

cases 7 BAIL APPL. NO. 5946 OF 2023 CRIME NO.651/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/1ST ACCUSED: VADAKARA, KOZHIKODE, PIN - 673 104. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE, 3 MUNEEER AGED 42 YEARS, S/O. NOT KNOWN, AREKKAL(H), KOTTAPPALLY, VADAKARA, KOZHIKODE, PIN - 673 542. BY ADV. G. SUDHEER (PP) B.A.Nos.5910 of 2023 & Conn. cases 8 BAIL APPL. NO. 7878 OF 2023 CRIME NO.610/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/2ND ACCUSED: VADAKARA, KOZHIKODE, PIN - 673 104. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE, 3 JASEERA ALSIYA AGED 39 YEARS, W/O. ABDHUL NISAR, BARISH, KUTTIKATTIL HOUSE, CHINGAPURAM P.O, VADAKARA, KOZHIKODE., PIN - 673 529. BY ADV. NOUSHAD K.A. (SR.PP) B.A.Nos.5910 of 2023 & Conn. cases 9 BAIL APPL. NO. 7881 OF 2023 CRIME NO.615/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/2ND RESPONDENT: VADAKARA, KOZHIKODE, PIN - 673 104. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE, 3 SHAHANAS AGED 25 YEARS, W/O. ABDUL RAHEEM, KEEZHALINTAVIDA (H), EDACHERY P.O., VADAKARA, KOZHIKODE, PIN - 673 502. BY ADV.VIPIN NARAYAN (SR.PP) B.A.Nos.5910 of 2023 & Conn. cases 10 BAIL APPL. NO. 7885 OF 2023 CRIME NO.653/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/1ST ACCUSED: SABITH, VADAKARA, KOZHIKODE, PIN - 673 104. 1 STATE OF KERALA, 2 STATION HOUSE OFFICER, BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE, 3 ABDHUL KHADER, AGED 63 YEARS, S/O. MOOSA, EDAKKUDI (H), MEMUNDA P.O, VADAKARA, KOZHIKODE., PIN - 673 104. BY ADV. G. SUDHEER (PP) B.A.Nos.5910 of 2023 & Conn. cases 11 BAIL APPL. NO. 7890 OF 2023 CRIME NO.658/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/2ND ACCUSED: VADAKARA, KOZHIKODE ., PIN - 673 104. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE., 3 MITHILAJ E AGED 25 YEARS, S/O. ABDUL RAHMAN, ITAKKUTI (H), MEMUNDA P.O., VADAKARA, KOZHIKODE., PIN - 673 104. BY ADV. NOUSHAD K.A. (SR.PP) B.A.Nos.5910 of 2023 & Conn. cases 12 BAIL APPL. NO. 7892 OF 2023 CRIME NO.677/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/3RD ACCUSED: VADAKARA, KOZHIKODE., PIN - 673 104.

BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE., 3 NISAR M K AGED 43 YEARS, S/O. MOOSA HAJI, MADATHIKANDI (H), NADAKKUTHAZHA P.O., VADAKARA, KOZHIKODE, PIN - 673 104. BY ADV. VIPIN NARAYAN (SR.PP) B.A.Nos.5910 of 2023 & Conn. cases 13 BAIL APPL. NO. 7898 OF 2023 CRIME NO.689/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/2ND ACCUSED: VADAKARA, KOZHIKODE., PIN - 673 104. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE., 3 RASHEEDA AGED 33 YEARS, W/O. BASHEER OTHAYOTH, OTHAYOTH (H), KOTTAPALLY P.O., VADAKARA, KOZHIKODE., PIN - 673 542. BY ADV. NOUSHAD K.A (SR.PP) B.A.Nos.5910 of 2023 & Conn. cases 14 BAIL APPL. NO. 7899 OF 2023 CRIME NO.702/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/2ND ACCUSED: VADAKARA, KOZHIKODE., PIN - 673 104. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE, 3 NASEEBA M M AGED 41 YEARS, W/O. MUHAMMED, MOTTAM MANALIL (H), MUTTUNGAL P.O., VADAKARA, KOZHIKODE., PIN - 673 104. BY ADV. NOUSHAD K.A. (SR.PP) B.A.Nos.5910 of 2023 & Conn. cases 15 BAIL APPL. NO. 7905 OF 2023 CRIME NO.703/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/2ND ACCUSED: VADAKARA, KOZHIKODE., PIN - 673 104. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE., 3 SHAMEENA W/O. SHAMSEER, EZHUVAMMAL THAZHAKKUNI (H), EDACHERI P.O., VADAKARA, KOZHIKODE., PIN - 673 502. BY ADV. G. SUDHEER (PP) B.A.Nos.5910 of 2023 & Conn. cases 16 BAIL APPL. NO. 7907 OF 2023 CRIME NO.736/2023 OF BADAGARA POLICE STATION, KOZHIKODE PETITIONER/2ND ACCUSED: VADAKARA, KOZHIKODE, PIN - 673 104. BADAGARA POLICE STATION, BADAGARA P.O, KOZHIKODE., 3 NEHILA AGED 23 YEARS, W/O. NUHUMAN, VALLIL (H), CHERANDATHOOR, THIRUVALLUR, VADAKARA, KOZHIKODE., PIN - 673 541. BY ADV. NOUSHAD K.A. (SR.PP) B.A.Nos.5910 of 2023 & Conn. cases 17

----- Bail Appl.
Nos. 5910, 5930, 5934, 5936, 5939, 5940, 5946, 7878, 7881,7885, 7890, 7892,
7898, 7899, 7905 and 7907 of 2023

ORDER

These are applications for anticipatory bail.

2. The petitioner in these cases is common. The petitioner is arrayed as an accused in Crime Nos.645/2023, Station, Kozhikode District.

3. The allegations against the petitioner are that the

petitioner while working in the Apollo Jewellery situated at Vatakara, with an intention to deceive the defacto complainants, he obtained money towards an alleged deposit scheme being conducted by the aforesaid entity known as M/s. Apollo Gold Vatakara (P) Ltd., promising high returns/gold ornaments of appropriate value and thereby he along with other accused had

B.A.Nos.5910 of 2023 & Conn. cases 18 committed the offences alleged against them.

4. The learned counsel appearing for the petitioner would submit that the petitioner is only an employee of the aforesaid company. It is submitted that the petitioner was the floor manager (Retail Administrator) of the jewellery shop

belonging to the aforesaid company. It is submitted that the petitioner was working only as per the directions issued by the Directors of the company, who are the other accused in these cases. It is submitted that apart from the above, the petitioner has no direct role in the acceptance of any deposit or the promising of high returns etc. It is submitted that no amount of money has been transferred to the account of the petitioner and

all amounts were transferred directly to the account of the company. It is submitted that in such circumstances, the petitioner may be granted anticipatory bail subject to any condition that this Court may deem fit to impose.

5. The learned Public Prosecutor opposes the grant of

bail. He submits that apart from the offences under Sections 406 and 420 of the Indian Penal Code, the provisions of the Banning of Unregulated Deposit Schemes Act (BUDS Act), 2019, have also been invoked. It is pointed out that there are several cases now registered against the petitioner and the other

accused alleging

B.A.Nos.5910 of 2023 & Conn. cases 19 that they had duped various persons by promising high returns/gold ornaments of appropriate value. It is submitted that since the provisions of the BUDS Act have been incorporated, it may be necessary to identify the properties of the accused for the purposes of attachment etc. It is submitted that all the other accused (Directors of the company) have absconded and are

believed to be abroad. It is submitted that if the petitioner is granted anticipatory bail, the same may not be conducive to a proper conclusion of the investigation in the cases registered against the petitioner and the other accused. It is submitted that the custodial interrogation of the petitioner may be absolutely essential to complete the investigation in a proper manner and also to identify the properties which are to be attached in proceedings under the BUDS Act.

6. Having heard the learned counsel for the petitioner

and the learned Public Prosecutor, I am of the opinion that the petitioner can be granted anticipatory bail subject to conditions. Prima facie, it appears that the petitioner was only an employee of the company known as M/s. Apollo Gold Vatakara (P) Ltd. Apart from the allegation that the petitioner had involved himself actively in promoting the scheme run by the company, there appears to be no allegation at present that the petitioner had

B.A.Nos.5910 of 2023 & Conn. cases 20 actually collected money on his own account. While it is true that the nature of the allegation raised against the petitioner indicates that the full cooperation of the petitioner may be necessary to complete the investigation in a proper manner, the same can be ensured without custodial interrogation. It is settled by the law laid down in *Sushila Agarwal v. State (NCT of Delhi) and Another*; (2020) 5 SCC 1, that even while on anticipatory bail, the accused can be deemed to be in custody for the purposes of recovery etc.

7. In the result, these applications are allowed. It is directed that the petitioner shall be released on bail, in the event of arrest in Crime Nos.645/2023, 646/2023,

647/2023, 648/2023, to the following conditions:-

(i) Petitioner shall execute separate bonds in respect of

each of the cases registered against him for sums of Rs.50,000/- (Rupees fifty thousand only) each with two solvent sureties each for the like sum to the satisfaction of the arresting officer;

(ii) Petitioner shall appear before the investigating officer in Crime Nos.645/2023, 646/2023, 647/2023, 648/2023, B.A.Nos.5910 of 2023 & Conn. cases 21

11.00 am on five consecutive days namely on 16-10-2023, 17-10-2023, 18-10-2023, 19-10-2023, 20-10-2023 and 21-10-2023 and thereafter whenever called upon to do so;

(iii) Petitioner shall not attempt to contact the de facto complainants or interfere with the investigation or to influence or intimidate any witness in Crime Nos.645/2023, 646/2023, District;

(iv) The petitioner shall surrender his passport before the

jurisdictional Court. If the petitioner does not have a passport, he shall execute an affidavit to that effect and file the same before the jurisdictional court within seven days of release on bail;

(v) Petitioner shall not involve in any other crime while on

bail. If any of the aforesaid conditions are violated, the Investigating officer in Crime Nos.645/2023, 646/2023, 647/2023, B.A.Nos.5910 of 2023 & Conn. cases 22 and 736/2023 of Badagara Police Station, Kozhikode District may file an application before the jurisdictional Court for cancellation of bail. Sd/- GOPINATH P. JUDGE ats

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