

Mohammed Ashraf, vs State of Kerala,

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Court : Kerala Orders

Decided On : Oct-27-2023

Judge : Honourable Mr.Justice Mohammed Nias C.P.

Appeal No. : Bail Appl./6262/2023

Appellant : Mohammed Ashraf,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.
FRIDAY, THE 27TH DAY OF OCTOBER 2023 / 5TH KARTHIKA, 1945
BAIL APPL. NO. 6343 OF 2023 CRIME NO.0452/2023 OF
Cherpulassery Police Station, Palakkad PETITIONER/ACCUSED NO.3:
KRISHNANUNNI S,AGED 36 YEARS SON OF SREEDHARA VARRIER,
STAFF, VALLAPUZHA SERVICE CO-OPERATIVE BANK,
VALLAPUZHA, PALAKKAD DISTRICT, NOW RESIDING AT
THARAKKAL WARRIYAM, MULAYANKAVU P.O., KULAKKALLUR ,
PALAKKAD DISTRICT, PIN - 679337 BY ADVS. ASWINI SANKAR R.S.
K.RAMAKUMAR (SR.) T.RAMPRASAD UNNI S.M.PRASANTH
T.H.ARAVIND RESPONDENT/COMPLAINANT & STATE: 1 STATE OF

KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 THE STATION HOUSE OFFICER, CHERPULASSERY, PALAKKAD DISTRICT, PIN - 679503 BY SRI.P.G.MANU(MAMMALASSERY) SR.PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25.10.2023, ALONG WITH Bail Appl..6262/2023, 6350/2023 AND CONNECTED CASES, THE COURT ON 27.10.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. FRIDAY, THE 27TH DAY OF OCTOBER 2023 / 5TH KARTHIKA, 1945 BAIL APPL. NO. 6262 OF 2023 CRIME NO.0452/2023 OF Cherpulassery Police Station, Palakkad PETITIONER/ACCUSED: MOHAMMED ASHRAF,AGED 45 YEARS S/O MOHAMMEDKUTTY HAJI, RESIDING AT KALATHIL HOUSE, VALLAPPUZHA, PALAKKAD, PRESIDENT, VALLAPPUZHA SERVICE , CO-OPERATIVE BANK LTD., F 1207, NELLAYA P.O, PALAKKAD DISTRICT, PIN - 679336 BY ADVS. P.N.MOHANAN C.P.SABARI AMRUTHA SURESH GILROY ROZARIO SUNITHA G. RESPONDENT/COMPLAINANT & STATE: 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 *2 MANSOOR ALI P,AGED 42 YEARS, S/O. MUHAMMEDKUTTY, PALLIYALIL HOUSE, CHOORAKODE P.O, VALLAPPUZHA, PALAKKAD DISTRICT (IS IMPEADED AS ADDL R2 AS PER ORDER DT 19/09/23 IN CRL MA 1/23 . BY ADV A.HAROON RASHEED SRI.P.G.MANU(MAMMALASSERY) SR.PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25.10.2023, ALONG WITH Bail Appl..6343/2023 AND CONNECTED CASES, THE COURT ON 27.10.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. FRIDAY, THE 27TH DAY OF OCTOBER 2023 / 5TH KARTHIKA, 1945

BAIL APPL. NO. 6350 OF 2023 CRIME NO.0452/2023 OF
CHERPULASSERY POLICE STATION, PALAKKAD
PETITIONER/ACCUSED : GOPAKUMAR N, AGED 49 YEARS SON OF
RAMAN NAIR, STAFF (ACCOUNTANT), VALLAPUZHA SERVICE CO-
OPERATIVE BANK, VALLAPUZHA, PALAKKAD DISTRICT, NOW
RESING AT PADMALAYAM HOUSE, MANNENGODE P.O., PALAKKAD
DISTRICT, PIN - 679301 BY ADVS. ASWINI SANKAR R.S.
K.RAMAKUMAR (SR.) T.RAMPRASAD UNNI S.M.PRASANTH
T.H.ARAVIND RESPONDENT/COMPLAINANT & STATE: 1 STATE OF
KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, PIN - 682031 2 STATION HOUSE OFFICER,
CHERUPULASSERY POLICE STATION, PALAKKAD DISTRICT, PIN -
679503 SRI.P.G.MANU(MAMMALASSERY) SR.PP THIS BAIL
APPLICATION HAVING COME UP FOR ADMISSION ON 25.10.2023,
ALONG WITH Bail Appl..6343/2023 AND CONNECTED CASES, THE
COURT ON 27.10.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.
FRIDAY, THE 27TH DAY OF OCTOBER 2023 / 5TH KARTHIKA, 1945
BAIL APPL. NO. 6356 OF 2023 CRIME NO.0452/2023 OF
CHERPULASSERY POLICE STATION, PALAKKAD
PETITIONER/ACCUSED : ANANDA PRASAD C,AGED 67 YEARS SON
OF NARAYANAN NAIR, RESIDING AT ABHIRAMAM, VANDANTHARA,
MANNENGODE P.O., PALAKKAD DISTRICT, PIN - 679307 BY ADVS.
ASWINI SANKAR R.S. K.RAMAKUMAR (SR.) T.RAMPRASAD UNNI
S.M.PRASANTH T.H.ARAVIND RESPONDENT/COMPLAINANT &
STATE: 1 STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 STATION
HOUSE OFFICER, CHERUPULASSERY POLICE STATION,
PALAKKAD DISTRICT, PIN - 679503 BY
SRI.P.G.MANU(MAMMALASSERY) SR.PP THIS BAIL APPLICATION

HAVING COME UP FOR ADMISSION ON 25.10.2023, ALONG WITH Bail Appl..6343/2023 AND CONNECTED CASES, THE COURT ON 27.10.2023 DELIVERED THE FOLLOWING:

MOHAMMED NIAS C.P., J.

----- Dated this the 27th day of October,
2023

ORDER

The accused in Crime No.452/2023 of Cherpulassery Police Station, alleging offences punishable under Section 420 r/w Section 34 of the IPC, have filed this application seeking pre-arrest bail.

2. The second respondent - defacto complainant herein had

complained to the Joint Registrar of Co-operative Societies alleging that the appointment of three persons mentioned therein has been made after collecting huge amounts of money from them by the Committee in office administering the Society. It is also pointed out that the entire selection is vitiated.

3. Learned senior counsel Sri. K. Ramakumar argues that the

petitioner in BA No.6343/2023 is only a Peon, while the petitioner in BA No.6350/2023 is the Accountant in the Society. He argues that the petitioner in BA No.6343/2023, being a Peon himself, could not have made any offer for an appointment. The allegation that he has taken money is obviously wrong. As regards the petitioner in BA No.6356/2023, he argues that he is not even a staff in the society to be implicated in the crime. The petitioner in BA No.6262/2023 was the President of the Committee at the relevant time. Learned counsel who appeared for the said petitioner argues that the Joint Registrar has found that the selection made is in order, and therefore, the allegation that money was taken is obviously wrong.

4. The Learned Public Prosecutor who filed a report opposing the

bail application submits that the three persons had taken Rs.25,00,000/- each so as to give the appointment, and it is a matter to be investigated, including through a custodial interrogation.

5. Learned counsel who appeared for the defacto complainant

submitted that the selection process itself was challenged, and in the earlier writ petition, there was a direction to conduct an enquiry into the complaints. After that, the vigilance of the co-operative department clearly found substance in the allegations of corruption, and therefore, a proper investigation should be conducted, including a custodial interrogation.

6. Having considered the rival submissions, I am of the view that

the petitioner in BA No.6343/2023 is only a Peon and prima facie, he could not have either offered an appointment or taken money for that. I find force in the contention of the senior learned Senior counsel as far as the petitioner in BA No.6343/2023 is concerned. As regards the other petitioners, it is to be noted that there are specific allegations made against them in the enquiry, at least in the preliminary stage. I do not think that the applicants, except the petitioner in BA No.6343/2023, are entitled to anticipatory bail. Under such circumstances, I dismiss the request for anticipatory bail submitted by the accused in BA Nos. 6262/2023, 6350/2023 & In the event the petitioners surrender before the Investigating Officer in two weeks, they shall be interrogated and thereafter, shall be produced before the Magistrate having jurisdiction on the date of surrender itself. If the petitioners move for bail, the court below shall, untrammelled by any of the observations in this order, consider the bail applications on merit as expeditiously as possible. If the petitioners do not surrender before the Investigating Officer, as directed above, the Investigating Officer will be free to arrest the petitioners as if no order has been passed in this case.

7. As far as the applicant in BA No.6343/2023, he will be entitled

to anticipatory bail. Under such circumstances, I am inclined to allow the application on the following conditions:- i. The petitioner is directed to surrender

before the Investigating Officer within a week from today, and on such surrender, the Investigating Officer can interrogate the petitioner. In the event of his arrest, the Investigating officer shall produce the petitioner before the jurisdictional court on the date of surrender itself. ii. On such production, the jurisdictional court shall release the petitioner on bail, on executing a separate bond for Rs.25,000/- (Rupees twenty-five thousand only) by the petitioner and by two solvent sureties each for the like sum to the satisfaction of the jurisdictional court.

(iii) The petitioner shall co-operate with the investigation and make himself available for interrogation and investigation as and when the Investigating Officer directs them to do so.

(iv) The petitioner shall not intimidate the witnesses or interfere

with the Investigation in any manner. v. The petitioner shall not be involved in any offence while on bail. vi. If any of the above conditions are violated, the court concerned will be empowered to take steps for cancellation of bail as per law. It is made clear that it is within the power of police to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioners, even when the petitioners are on bail as per the judgment of the Apex Court in Sushila Aggarwal and others v. State (NCT of Delhi) and another [2021 (1) KHC 663]. Accordingly, BA No.6343/2023 is allowed, and BA Nos.6262/2023, Sd/- MOHAMMED NIAS C.P. JUDGE dlk/26.10.23 APPENDIX OF BAIL APPL. 6262/2023 PETITIONER'S ANNEXURES Annexure A1 TRUE COPY OF THE ORDER DATED 10.02.2023 OF THE JOINT REGISTRAR Annexure A2 TRUE COPY OF THE ORDER DATED 05.06.2023 OF THE REGISTRAR OF CO- OPERATIVE SOCIETIES Annexure A3 TRUE COPY OF THE INTERIM ORDER DATED 04.07.2023 IN W.P.(C).NO.20934/2023 Annexure A4 TRUE COPY OF THE ORDER DATED 06.07.2023 OF THE REGISTRAR ADDRESSING THE JOINT REGISTRAR Annexure A5 TRUE COPY OF THE COMPLAINT DATED

21.07.2023 OF THE ASSISTANT REGISTRAR BEFORE THE STATION HOUSE OFFICER, CHERPULASSERY POLICE STATION Annexure A6 TRUE COPY OF THE CIRCULAR NO.50/2021 DATED 04.12.2021 ISSUED BY THE REGISTRAR OF CO- OPERATIVE SOCIETIES Annexure A7 TRUE COPY OF THE FIR

DATED 22.07.2023 OF THE STATION HOUSE OFFICER, UNDER SECTION 420 & 34 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT I, OTTAPPALAM

APPENDIX OF BAIL APPL. 6350/2023 PETITIONER'S ANNEXURES Annexure A TRUE COPY OF COMPLAINT DATED 07..11..2022 SUBMITTED BY ONE MANSOOR ALI BEFORE THE JOINT REGISTRAR OF CO-OP. SOCIETIES, PALAKKAD Annexure B TRUE COPY OF COMPLAINT DATED 18..11..2022 SUBMITTED BY MANSOOR ALI TO THE JOINT REGISTRAR OF CO-OP. SOCIETIES, PALAKKAD Annexure C TRUE COPY OF FIR NO. 0452 OF 2023 DATED 22..07..2023 REGISTERED BY THE CHERUPULASSERY POLICE
APPENDIX OF BAIL APPL. 6356/2023 PETITIONER'S ANNEXURES Annexure A TRUE COPY OF COMPLAINT DATED 07..11..2022 SUBMITTED BY MANSOOR ALI BEFORE THE JOINT REGISTRAR OF CO-OP. SOCIETIES, PALAKKAD Annexure B TRUE COPY OF COMPLAINT DATED 18..11..2022 SUBMITTED BY MANSOOR ALI BEFORE THE JOINT REGISTRAR OF CO-OP. SOCIETIES, PALAKKAD Annexure C TRUE COPY OF FIR NO. 0452 OF 2023 DATED 22..07...2023 REGISTERED BY THE CHERUPULASSERY POLICE STATION
APPENDIX OF BAIL APPL. 6343/2023 PETITIONER ANNEXURES Annexure A TRUE COPY OF COMPLAINT DATED DATED 07..11..2022 SUBMITTED BY ONE MANSOOR ALI BEFORE THE JOINT REGISTRAR OF CO-OP. SOCIETIES, PALAKKAD Annexure 2 TRUE COPY OF COMPLAINT SUBMITTED BY MANSOOR ALI ON 18..11..2022 BEFORE THE JOINT REGISTRAR OF CO-OP. SOCIETIES, PALAKKAD Annexure C TRUE COPY OF FIR NO. 0452 OF 2023 REGISTERED BY THE CHERUPULASSERY POLICE STATION

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