

Nadeer P. vs State of Kerala,

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Court : Kerala Orders

Decided On : Jan-25-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./9549/2022

Appellant : Nadeer P.

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
WEDNESDAY, THE 25TH DAY OF JANUARY 2023 / 5TH MAGHA,
BAIL APPL. NO. 9276 OF 2022 CRIME NO.1320 /2022 OF
THALIPARAMBA POLICE STATION, KANNUR RURAL
PETITIONERS/ACCUSED 2 TO 8 & 10 : 1 RASIYA, D/O. ABDULLA,
AGED 42 YEARS, THALAYILLATH HOUSE, ARATHIPPARAMBA,
EZHILODE P.O., KUNHIMANGALAM, KANNUR-670 309 2 FOUSIYA,
W/O. AYOOB, AGED 42 YEARS, PARAMMAL HOUSE, EZHILODE,
CHERUTHAZHOM, KUNHIMANGALAM, KANNUR- 670 309

3 MUBEENA ASEES SAP, W/O. JAFAR, AGED 27 YEARS, SAP HOUSE, NARIKKODU, ERANTHALA EZHOME, KOTTLA, KANNUR-670 334 4 HAWAS HAMEED, AGED 22 YEARS S/O. RASIYA, THALAYILLATH HOUSE, ARATHIPPARAMBA, EZHILODE PO, KUNHIMANGALAM, KANNUR-670 309 5 SAMEERA AG, AGED 37 YEARS D/O. USMAN, FATHIMA MANZIL, THANKAYAM NORTH, THRIKKARIPPOOR, KASARGOD- 671 310 ..2..

6 THALAYILLATH AHMMED, AGED 39 YEARS C/O. SAMEERA AG, THALAYILLATH, THANKAYAM NORTH, THRIKKARIPPOOR, KASARGOD -671 310 7 KUNHAMI V P, AGED 49 YEARS W/O. UMMER P.P, ASNA NIVAS, KANJIYIL SOUTH, THRIKKARIPPOOR, KASARGOD- 671 310 8 THAHIRA MUHAMMAD ASHRAF, AGED 40 YEARS W/O MUHAMMAD ASHRAF C V, RASHEEDAS, MATTOOL NORTH, NEAR MSC BANK, MATTOOL NORTH, KANNUR- 670 325 BY ADVS. SUMAN CHAKRAVARTHY RAZAK M.

RESPONDENT/STATE :

1 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 ADDL.R2. ABDUL JASEEM P.K , AGED 35 YEARS S/O MUHAMMED BASHEER P.K, CHIEF MANAGER, SOUTH INDIAN BANK LTD, KANNUR REGIONAL OFFICE, KANNUR CITY - 670 002. IS IMPEADED AS PER ORDER DATED 12-12-2022 IN CRL.M.A. NO.1/2022. BY ADVS. THOMAS J.ANAKKALLUNKAL NIRMAL CHERIYAN VARGHESE JAYARAMAN S. LITTY PETER ..3..

ANUPA ANNA JOSE KANDOTH BY SMT.SHEEBA THOMAS, PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 25.01.2023, ALONG WITH Bail Appl..9549/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..4..

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
WEDNESDAY, THE 25TH DAY OF JANUARY 2023 / 5TH MAGHA, 1944 BAIL
APPL. NO. 9549 OF 2022 CRIME NO.1320 /2022 OF TALIPARAMBA POLICE
STATION, KANNUR PETITIONER/ACCUSED NO.9 : NADEER P. AGED 26
YEARS S/O.NOUSHAD A.C., NASIYA MANZIL, MUTTIL, THAVAM,
CHERUKUNNU, KANNUR CITY, KANNUR DISTRICT, PIN - 670301 BY ADVS.
M.SASINDRAN SATHEESHAN ALAKKADAN RESPONDENT/STATE &
COMPLAINANT:

1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031 (CRIME NO
1320/2022 OF TALIPARAMBA POLICE STATION, KANNUR DISTRICT)
2 THE STATION HOUSE OFFICER, TALIPARAMBA POLICE STATION,
(CRIME NO 1320/2022) KANNUR DISTRICT, PIN-670 141 3 ADDL.R3
ABDUL JASEEM P.K, (SOUGHT TO BE IMPLEADED) AGED 35
YEARS S/O MUHAMMED BASHEER P.K, CHIEF MANAGER, SOUTH
INDIAN BANK LTD, ..5..

KANNUR REGIONAL OFFICE, KANNUR CITY -670 002. BY ADVS. THOMAS
J.ANAKKALLUNKAL NIRMAL CHERIYAN VARGHESE ANUPA ANNA JOSE
KANDOTH JAYARAMAN S. LITTY PETER SMT.NEEMA T.V., SR.PUBLIC
PROSECUTOR THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
25.01.2023, ALONG WITH Bail Appl..9276/2022, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING: ..6..

A.BADHARUDEEN, J.

----- B.A.Nos.9276 and 9549 of 2022
----- Dated this the 25th day of January,
2023

ORDER

B.A.No.9276 of 2022 is an application filed by the accused Nos.2 to 8 and 10 in Crime No.1320 of 2022 of Thalipparamba Police Station where, accused Nos.1 to 10 alleged to have committed offences punishable under Sections 120-B, 406, 420 r/w 34 of the Indian Penal Code. B.A.No.9549 of 2022 is at the option of the 9th accused in the above crime and he also seeks relief of pre-arrest bail.

2. Heard the learned counsel for the petitioners, the learned Public Prosecutor as well as Adv.Thomas J. Anakkallunkal who appeared for the defacto complainant/M/s.South Indian Bank. ..7..

3. The learned counsel, who appearing for the

defacto complainant, filed detailed counter. The prosecution case is that as part of conspiracy hatched between the accused in this crime starting from 25.11.2020 on different days, accused Nos.1 to 10 reached South Indian Bank, Thaliparamba and pledged fake gold lockets on the submission that those items were original gold and thereby, the accused cheated the bank and misappropriated the total sum of Rs.72.70 lakh. The prosecution alleges commission of the above offences on these background facts.

4. It is argued by the learned counsel for the

petitioners that the first accused is the person who had done all the overt acts and accused Nos.2 to 10 are the relatives of the first accused and they were forced to be a part of the transaction without their knowledge and consent and they did not have any knowledge with regard to pledging of fake gold, as contended. ..8..

5. According to the learned counsel, the

petitioners are ready to surrender before the Investigating Officer for the purpose of investigation and therefore, they are liable to be released on bail. He also would submit that no documents available in this case to see that the petitioners herein withdrew the money, after pledging the gold ornaments and therefore, their complicity in this case is much less.

6. The learned Public Prosecutor opposed grant

of bail, on the submission that, since the prosecution alleges conspiracy and as part of conspiracy, accused Nos.2 to 10, in whose names, the respective gold loans were granted on pledging fake gold, they could not claim absolute innocence and their complicity on par with the first accused is prima facie established. Therefore, their custodial interrogation and identification of fake gold are necessary to effectuate meaningful investigation and eventful prosecution. ..9..

7. The learned counsel appearing for the

defacto complainant/M/s.South Indian Bank zealously opposed the arguments advanced by the learned counsel for the petitioners. The learned counsel filed detailed counter as well as Annexure R2(a) series statement of accounts in relation to the accused showing remittance of amount in their respective accounts and release of the same by them, on the date of pledge of fake gold.

8. The learned counsel for the defacto

complainant also submitted that at the first look, the alleged gold ornaments, which were found to be fake, later, appear to be original, because its exterior portion is fully covered with gold, while keeping lead inside the said covering, so as to deceive anybody at the first blush. The said manipulation, at the instance of the accused, was detected, when one among the pledged items was cut and examined. It is submitted that the gold loan amounts were granted to ..10.. accused Nos.2 to 10 at their volition, since they approached the bank and availed the same by putting separate applications. Further, they had received the loan amount through their own accounts, though not repaid yet. Therefore, the absolute innocence, as canvassed by the learned counsel for the petitioners cannot be believed in this matter involving looting of Rs.72.70 lakh. As such, arrest and custodial interrogation of accused Nos.2 to 10 and identification of fake gold items are essential part of investigation to effect the same meaningful.

9. On perusal of the case diary, in the First

Information Statement, it has been specifically stated by the Manager who had given the FI Statement, regarding the way in which the accused herein availed

gold loan and the amounts were received by pledging fake gold. In such a case, it is not safe to hold that the petitioners are innocent at the initial stage of investigation. To the contrary, available ..11.. materials would suggest that, prima facie, materials are in abundance against the petitioners. In fact, in this matter, a detailed investigation, after arresting and questioning of the petitioners are absolutely necessary. In such a case, grant of anticipatory cannot be considered. Therefore, both petitions fail and the same are, accordingly, dismissed. Sd/- A.BADHARUDEEN, JUDGE rkj ..12.. APPENDIX OF BAIL APPL. 9276/2022 PETITIONER ANNEXURES ANNEXURE-1 A TRUE COPY OF THE FIR AND FIS CRIME NO.1320/2022 OF THALIPPARAMBA POLICE STATION KANNUR RURAL RESPONDENT ANNEXURES ANNEXURE R2A TRUE COPY OF THE ACCOUNT DETAILS OF THE PETITIONERS ANNEXURE R2B THE LOAN AMOUNT DISBURSED TO THEIR RESPECTIVE ACCOUNTS WERE AT SEVERAL INSTANTS TRANSFERRED TO OTHER ACCUSED ACCOUNTS ..13.. APPENDIX OF BAIL APPL. 9549/2022 PETITIONER ANNEXURES ANNEXURE AI A TRUE COPY OF THE FIR IN CRIME NO.1320/2022 OF TALIPARAMBA POLICE STATION, KANNUR DISTRICT DATED 14-11-2022 RESPONDENT ANNEXURES ANNEXURE R3A TRUE COPY OF THE ACCOUNT DETAILS OF THE PETITIONERS ANNEXURE R3B THE LOAN AMOUNT DISBURSED TO THEIR RESPECTIVE ACCOUNTS WERE AT SEVERAL INSTANTS