

Abdul Basith vs State-Represented by Public Prosecutor

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Court : Kerala Orders

Decided On : Aug-10-2021

Judge : Honourable Mr. Justice K.Haripal

Appeal No. : Bail Appl./5717/2021

Appellant : Abdul Basith

Respondent : State-Represented by Public Prosecutor

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE K.HARIPAL TUESDAY, THE 10TH DAY OF AUGUST 2021 / 19TH SRAVANA, 1943 BAIL APPL. NO. 5717 OF 2021 CRIME NO.343/2021 OF NALLALAM POLICE STATION, KOZHIKODE PETITIONER/1ST ACCUSED: ABDUL BASITH AGED 32 YEARS S/O.BEERANKUTTY, RESIDING AT MUTHUPARAMB HOUSE, PANNIKODE P.O., MUKKAM, KOZHIKODE DISTRICT - 673 602. BY ADVS. SHYAM PADMAN M.K.MUFEEED MUHAMMED YASIL LAYA MARY JOSEPH RESPONDENT/STATE& COMPLAINANT: 1 STATE-REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM. 2 THE STATION HOUSE OFFICER (CR.NO.343 OF 2021 OF NALLALAM

POLICE STATION), KOZHIKODE DISTRICT. OTHER PRESENT: PP - SRI. PRASANTH M.P. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: BA 5717/21 2

ORDER

Petitioner is the first accused in crime No.343/2021 of Nallalam police station, Kozhikode district, which was registered on 09.07.2021 alleging offence under Sections 381, 411 and 414 read with 34 of IPC. Originally there were two accused in the crime. The crime was registered on the strength of the First Information Statement given by one Vaisakhan who is the Cluster Manager of Hiveloop Logistics Pvt. Ltd. (Udaan Express). The prosecution allegation is that between 9 a.m. and 12 on 28.06.2021 accused Nos.1 and 2, who are the Hub Manager of the said company and his friend respectively, dishonestly removed mobile phones worth Rs.1.14 crores in 209 boxes kept for delivery. The said statement was given on 09.07.2021 and thus the crime was registered. During the course of investigation the petitioner was arrested on 09.07.2021 and since then he is in judicial custody.

2. During the course of investigation, the 2nd accused in the FIR has been made the 3rd accused whereas Sujesh Kumar, team leader in the company has been made the 2nd accused.

3. I heard the learned counsel for the petitioner and also the learned Public Prosecutor. The case diary was summoned and perused.

4. The learned counsel for the petitioner submitted that he is the BA 5717/21 3

Branch Manager of the said company but he is innocent of these allegations. The 3rd accused is the buyer of mobile phones from Hiveloop Logistics, who has business transactions with the company for the last four years. The 3rd accused used to buy mobile phones on

credit basis and used to pay money within fifteen working days. On the date of incident the petitioner was on leave and the 2nd accused was in charge. Himself and the 2 nd accused are falsely implicated with the intention of putting the 3 rd accused behind the bars. According to him, successive applications filed by him before the Judicial First Class Magistrate Court have been turned down and that made him to approach this Court under Section 439 of the Cr.P.C. The learned counsel further submitted that the petitioner has already been given to police custody and any further detention is unnecessary. The 2 nd accused was also arrested and now he has been released on bail. According to the learned counsel, the petitioner belongs to an affluent family. He is in judicial custody for the last more than 32 days and it is a pressure tactic of the prosecution to make good the loss sustained by the defacto complainant by the family members of the petitioner.

5. The learned Public Prosecutor has strongly opposed the application. According to him, 1001 mobile phones upkept in the godown of BA 5717/21 4

the company in 198 boxes were found missing. The total value of the mobile phones comes to Rs.1.14 crores. Even though the petitioner was taken to police custody only 21 phones could be recovered and if the petitioner is released on bail at this stage, that would adversely affect the smooth conduct of investigation.

6. As noticed earlier, the crime was registered on the basis of the

First Information Statement given by one Vaisakhan who is the Cluster Manager of the said Hiveloop Logistics Pvt. Ltd., which is engaged in online sale of mobile phones and other electronic items, fittings etc. they have a godown at Koprakkalli. The petitioner who is the 1 st accused is the person in charge of the said godown. On the alleged date of incident he did not attend the office and when the godown was inspected by the defacto complainant, 1001 mobile phones kept in 209 boxes were found missing. Similarly, the cameras installed in the godown was found switched off from 9.57 a.m. on 28.06.2021 till 8 p.m. on the same day.

When the petitioner was contacted over phone, his mobile was found switched off. On 28.06.2021 the 1 st accused alone was in the godown. According to him, accused Nos.1 and 2 had connived together for dishonestly removing the mobile phones. During the course of investigation the petitioner was arrested on 09.07.2021.

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7. As noticed earlier, going by the case diary, the petitioner is the 1 st

accused whereas one Sujesh Kumar and Sanoof are accused 2 and 3. Even though it is submitted that the 2 nd accused has already been released on bail, that cannot be inferred from the case diary. Whatever it may be, even assuming that the 2nd accused was released on bail, that is not a good reason for the release of the petitioner. He was the person in charge of the godown being the branch manager. So it seems that he was the person in possession and power of so much items kept in the godown in his capacity as the branch manager. This is a case in which items worth nearly 1.14 crores have been stolen by an employee of the company. It is true that even after his arrest and detention for over 32 days, most of the items could not be recovered. But the investigation is at the nascent stage. On his own showing it is evident that he belongs to affluent background. If he is released on bail at this stage, that would adversely affect the smooth conduct of the investigation and recovery of the remaining stolen articles.

8. Moreover, from the case diary it is evident that another crime,

No.402/2021 of Nallalam police station has been registered against him on 30.07.2021 alleging offence under Sections 408 and 420 of IPC, which is under investigation; there the allegation is that he had collected an amount of BA 5717/21 6

Rs.3,57,995/- from various customers of the company, after supplying mobile phones; but the amount was misappropriated and thus committed cheating. On these considerations, the application for bail moved by the petitioner cannot be allowed and it is dismissed. Sd/- K. HARIPAL
JUDGE okb/9.8.21 //True copy// P.S. to Judge

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