

Noman vs State of Kerala

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Court : Kerala

Decided On : Sep-30-2021

Judge : Honourable Mr. Justice K.Haripal

Appeal No. : Bail Appl./7040/2021

Appellant : NOMAN

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE K.HARIPAL THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943 BAIL APPL. NO. 7040 OF 2021 CRIME NO.41/2021 OF KANNAPURAM POLICE STATION, KANNUR PETITIONER/7TH ACCUSED: NOMAN AGED 35 YEARS S/O. RAISAL, SAMSHABAD, KHENCHEFAN, PUNAHANA P.O., MEWAT DISTRICT, HARYANA STATE, PIN-122508. BY ADVS. P.MOHAMED SABAH SAIPOOJA RESPONDENTS/STATE & COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT ERNAKULAM-682 031. 2 STATION HOUSE OFFICER KANNAPURAM POLICE STATION, KANNUR DISTRICT, 673 001. OTHER PRESENT: SR.PP -

SRI. RENJITH T.R. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27.09.2021, THE COURT ON 30.09.2021 DELIVERED THE FOLLOWING: BA.7040/2021 2

ORDER

This is an application for regular bail moved by the 7 th accused in

crime 41 of 2021 of Kannapuram police station in Kannur district, which was registered on 22.02.2021 alleging offence under Sections 457, 380 and 461 of the Indian Penal Code. The first information statement for registering the crime was furnished by one Sunil who is the Assistant Secretary of Pappinissery Co-operative Rural Bank at its head office in Kalyassery. It is alleged that between 21.36 hours on 20.02.2021 and 11 hours on 22.02.2021, the ATM counter of the aforesaid Bank at Irinavu road was broke opened by some miscreants and an amount of Rs.4,30,500/- was stolen. At that time police had no clue about the robbers and no name was included in the FIR. But detailed investigation conducted by the police led to the arrest of the petitioner who is the 7 th accused in the crime. He was

arrested on 04.03.2021 and since then is in judicial custody. On conclusion

of investigation, charge sheet has been laid before the Judicial First Class Magistrate's Court-I, Kannur. His application for bail stands dismissed by the learned Magistrate and also the learned Sessions Judge. Later he moved BA.3980/2021 before this Court; after hearing counsel on both sides, when the order was about to be passed, the learned counsel withdrew that application and it was dismissed as withdrawn. In that sense, this is the

BA.7040/2021 3 second application moved by the petitioner.

2. I heard the learned counsel for the petitioner and also the learned Senior Public Prosecutor. The learned Public Prosecutor also made available the Case Diary for perusal.

3. According to the learned counsel for the petitioner, since the

final report has already been laid, there is absolutely no necessity of detaining the petitioner in custody; Section 457 of the IPC cannot be attracted against the petitioner; he has been made an accused solely on the basis of the confession statement of a co-accused, which is not admissible. Similarly, the counsel also placed reliance on Annexure-2 statement of Charanjith Singh S/o.Devaraj of West Delhi, recorded under Section 161 of the Cr.P.C., who is the employer of the petitioner. According to him, apart from these materials which are very thin, there is no legal evidence to connect the involvement of the petitioner in the crime. According to the learned counsel, the petitioner was a driver of a container lorry; he belongs to Haryana; he has wife and five small children to look after, no recovery has been effected from him and therefore, his continued detention is unnecessary that for the reason that he belongs to Haryana the application may not be dismissed. Counsel also offered to abide any condition imposed by this Court for releasing the petitioner.

BA.7040/2021 4

4. The learned Senior Public Prosecutor has strongly opposed the

application. According to him, the petitioner is the accused in three cases of breaking open ATMs and large amounts were robbed by the gang consisting of the petitioner and others. So far only accused Nos.1, 2 and 6 have been arrested and Rs.16,40,000/- could be recovered but large chunk of the stolen amount remains to be recovered. There are two other cases of similar nature. The active role played by the petitioner in these crimes is very much evident from the records. He also pointed out that the petitioner is the master brain behind the commission of the crimes, that he is reportedly the master trainer. Therefore the application is sought to be dismissed.

5. As noticed earlier, when the incident of breaking open an ATM

and missing of large sum of money stored therein were reported, at first the police had no clue about the culprits. Later, investigation based on CCTV footages led to

the arrest of the petitioner and two others from their native village in Haryana. Later, one more accused was arrested but large amount of money stolen by the accused persons by breaking open three ATMs are remaining to be recovered.

6. I have gone through the Case Diary. It is true that the records do not indicate that the petitioner had actually participated in breaking open BA.7040/2021 5

the ATMs and stealing money. But there are very cogent materials against the petitioner. Records indicate that he was the driver of a container lorry which belongs to one Charanjith Singh, one of the witnesses, who was examined by the Investigating Officer. Petitioner was a frequent traveller to Kerala in his capacity as the driver of the lorry. This time he was accompanied by some of his cronies who were the actual perpetrators of the crime. At the first place he had carried some such miscreants also in his lorry; he was fully aware that the other accused persons also travelled in another vehicle ahead of him from Haryana to Kerala. Secondly, going by the prosecution records, there are materials to say that the gas cutter and the gas cylinders which were used for the commission of the crime of breaking open the ATMs were carried in his lorry from Haryana to Kerala. He had dropped them near the place of occurrence and proceeded to Malappuram with loadful of chappels; on his return he waited for the co-accused at a fixed place and later some of them were also taken in his lorry. It has also come out from the material objects, that the gas cutter and the cylinder were taken back in his lorry to Haryana. Later, when police went in search of them at the native village of the petitioner and others, three of them were found together in their hideout and Rs.16,40,000/- was recovered from the possession of one of the co-accused. In order words, it is not justified in

BA.7040/2021 6 saying that the petitioner was a mere lorry driver, was totally unaware of the acts done by his co-accused etc.

7. As I noted earlier, he had carried some of the accused persons

from Haryana in his vehicle and also carried the gas cylinder and gas cutter in his vehicle and on the way back also he had carried the gas cutter and the cylinder in his vehicle. It seems that the modus operandi of the accused persons was to travel

interstate and conduct operations and then collect the booty and carry it to their native place. Here, there is evidence that not only the cylinder and gas cutter, he had carried the looted money also in his vehicle and handed over to the co-accused in Haryana. In other words, even though the petitioner had played the role of a driver of the lorry, he had active connivance in the commission of the crime. He had taken some of the accused persons along with the instruments, from Haryana in his vehicle. Some of them were taken back in his vehicle. The booty also was taken in his vehicle. It has come out that, at first the booty was in the Bolero car travelled by some of the accused. Later, it was shifted to the lorry of the petitioner as they believed that carrying so much money in the car in an interstate travelling was not safe. So there are clear materials to find that the petitioner has played active role in the commission of the crime.

BA.7040/2021 7

8. There are two other criminal cases of similar nature and in those cases he has been granted statutory bail.

9. It is true that the fact that he belongs to another State is not a

good reason for rejecting his application. But, having regard to the seriousness of the crime, the modus operandi adopted by the petitioner and his accomplices, the active role played by the petitioner etc. do not justify his release on bail. Even though materials are wanting to say that he was the master trainer, as noticed earlier, his active role in facilitating the crime and also transporting the booty and other instruments cannot be denied. Therefore, there is no justification in releasing the petitioner on bail. The application is only to be dismissed.

The bail application is dismissed. Sd/-K.HARIPAL JUDGE okb/27.9 //True copy//
P.S. to Judge

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