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Jose vs State of Kerala

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Court : Kerala

Decided On : Apr-21-2020

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./2251/2020

Appellant : JOSE

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT: THE HONOURABLE MR.JUSTICE C.S. DIAS TUESDAY, THE 21st DAY OF APRIL 2020/1st VAISAKHA , 1942 Crime no 1002/19 of Irinjalakuda Police Station Petitioner /1st Accused Jose s/o Jacob aged 52, Malieakkal House Potta Village and Desom Trissur District. By Adv. T. N. Manoj Advocate, Respondent

State of Kerala represented by the Public Prosecutor High Court of Kerala. By Public Prosecutor Sri.Amjad Ali THIS B.A. HAVING BEEN FINALLY HEARD ON 21.04.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

This is an application filed under Section 439 of the Code of Criminal Procedure.

2. The petitioner is the first accused in Crime No.1002 of 2019

of the Irinjalakuda Police Station. The petitioner is alleged to have committed the offences punishable under Sections 406, 420 read with section 34 of the Indian Penal Code.

3. The prosecution case, in brief, is that: the accused 1 and 2 in

furtherance of a common intention, made the defacto complainant believe that they would arrange a Visa for him to migrate to Canada and accordingly, received an amount of Rs.7,25,000/-. However, the defacto complainant was given a fake Visa. Thereafter, the accused did not repay the amount that was received. Hence the accused have committed the above offences.

4. The petitioner was arrested on 14.3.2020. His application for bail was dismissed by the Judicial First Class Magistrate, Irinjalakuda on 17.3.2020 in C.M.P. No.2984 of 2020.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor via video-conferencing.

6. The learned counsel for the petitioner argued that it is more than a month that the petitioner is in judicial custody. Investigation in

the above case is complete. According to him, the petitioner is actually a victim in the said episode because the second accused had collected the money from the petitioner also. The petitioner has not committed any offence as alleged in the crime, and is innocent.

7. The learned Public Prosecutor on instructions submitted that investigation in the case is complete. The Final report has been filed. The petitioner's further detention is unnecessary.

8. The Hon'ble Supreme Court in Sanjay Chandra v. CBI [2012 (1) SCC 40] held as follows: "27. This Court, time and again, has stated that bail is the rule

and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution".

9. Recently, the Honourable Supreme Court in Nikesh Tarachand Shah v. Union of India [2018 (11) SCC 1] after going back to the days of the Magna Carta and after referring to Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565] has reiterated the

same view in Sanjay Chandra v. CBI (supra). Again, in P.Chidamabram v. Directorate of Enforcement [(2019) SCC Online SC 1549] the above proposition has been fortified.

10. After the outbreak of the Novel Corona Virus (COVID -19) pandemic in the country, the Hon'ble Supreme Court in In Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition

(C) No.1 of 2020) observed that the issue of overcrowding of prisons is

a matter of serious concern. The State Governments were directed to take adequate measures to de-congest the prisons. Following the above direction, the Home Department, Government of Kerala has promulgated order dated 25.03.2020, inter alia, directing the release of under-trial prisoners alleged to have committed offences punishable with punishment for seven years or less. Later, a Full Bench of this Court by order dated 25.03.20202 in W.P.(C) No.9400 of 2020 (Suo Motu), has issued directions to de-congest the prisons in the State, keeping in mind the proposition that bail is the rule and jail is the exception.

11. Having regard to the facts and circumstances of the case,

particularly the fact that that investigation in the case is completed and the petitioner has been in judicial custody since 14.3.2020 and that the petitioner's further incarceration is unnecessary and the law laid down by the Hon'ble Supreme Court in the afore quoted decisions, and also due to Covid-19 pandemic, I am inclined to allow this bail application.

12. In the result this bail application is allowed, on the following conditions:-

(i) Due to the present National lock-down and the

closure of Courts, the Jail Superintendent, where the petitioner is incarcerated, is directed to release the petitioner on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed sureties/immediate relatives. The petitioner shall also file an undertaking to the Jail Superintendent that he and his sureties will execute the bail bond before the jurisdictional Court within one week of its re-opening. The Jail Superintendent after ensuring the compliance of the above conditions, shall release the petitioner to the Station House

Officer of the Police Station where the crime has been registered, who shall after noting down the above details, release the petitioner. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioner.

(ii) The petitioner shall within one week from the re-

opening of the jurisdictional Court, if not already re-opened, execute a bond for a sum of Rs.50,000/- (Rupees fifteen thousand only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioner shall appear before the Investigating Officer on all Saturdays between 10.00 a.m and 11 a.m till final report is filed.

(iv) The petitioner shall not tamper with the evidence or influence the witnesses in the case, in any manner, whatsoever.

(v) The petitioner shall not commit any offence while on bail.

(vi) The petitioner shall not leave the State of Kerala without the permission of the jurisdictional court.

(vii) Needless to mention that, if the petitioner violates

any of the above conditions, the Station House Officer shall be at liberty to approach the jurisdictional Court and file appropriate application seeking for cancellation of the bail. Sd/- C.S.DIAS, JUDGE sou.

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