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**Saneesh vs State of Kerala,**

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**SooperKanoon Citation** : sooperkanoon.com/1764552

**Court** : Kerala

**Decided On :** Apr-24-2020

**Judge** : Honourable Mr.Justice C.S.Dias

**Appeal No.** : Bail Appl./2410/2020

**Appellant** : Saneesh

**Respondent** : State of Kerala,

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT: THE HONOURABLE MR.JUSTICE C.S. DIAS FRIDAY, THE 24TH DAY OF APRIL 2020/4TH VAISAKHA , 1942 B.ail Application . No.2410 of 2020 (IN CRIME NO.279/2020 OF KODUNGALLUR POLICE STATION, THRISSUR DISTRICT.

PETITIONER/ACCUSED: SANEESH, AGED 18 YEARS, S/O.SUBRAMANIAN, KALATHIL HOUSE, POY BAZAR DESOM, AZHIKODE VILLAGE, KODUNGALLUR, THRISSUR - 780 664. BY ADV.DINESH MENON RESPONDENT/COMPLAINANT:: STATE OF KERALA REPRESENTED BY SUB INSPECTOR OF POLICE, KODUNGALLUR POLICE STATION THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA , ERNAKULAM - 682 031.

BY Public Prosecutor SrI.Amjad Ali THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 24.04.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ..2..

## ORDER

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

2. The petitioner is the accused in Crime

No.279/2020 of the Kodungalloor Police Station. The petitioner is alleged to have committed the offences punishable under Sections 406 and 420 of the Indian Penal Code.

3. The prosecution case, in brief, is that: the de

facto complainant had booked a Honda Activa Scooter in Gulan Motors, owned by the petitioner and effected payment of Rs.76,000/- to his account. But, the petitioner did not deliver the vehicle or return the amount that he received. Thus, he has committed the above offences.

4. The petitioner was arrested on 04.03.2020. ..3.. His application for bail was dismissed by the learned Magistrate. The petitioner has been in detention for the last 51 days.

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 the petitioner is absolutely innocent of the accusations that have been leveled against him. The Investigation in the case is complete. The petitioner has been in incarceration for the last 51 days. His continuous detention in prison is unnecessary. Hence, the petitioner may be enlarged on bail.

7. The learned Public Prosecutor opposed the application.

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 ..4.. 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 ..5.. 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,

particularly the fact that the petitioner has been in incarceration for the last 51 days; that the investigation in the case is almost complete; that the continued

detention of the petitioner in judicial custody is unnecessary, the legal proposition laid down by the Honourable Supreme Court in aforecited decisions; and ..6.. the directions of the Hon'ble Supreme Court and a Full Bench of this Court to decongest prisons in view of 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 ..7..

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 fifty 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. ..8..

(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 kkj/24.04.2020

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