

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 26TH DAY OF DECEMBER 2014/5TH POUSHA, 1936

Bail Appl..No. 9011 of 2014

**L.P.NO.142/2011 IN S.T.NO.902/2008 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
MANNARKKADU**

PETITIONER(S)/ACCUSED :

**BIJU FRANCIS,
S/O.LATE FRANCIS, KATTUPPARA HOUSE,
KALLADIKKODU AMSHAM DESHAM, MANNARKKADU TALUK,
PALAKKAD DISTRICT.**

BY ADV. SRI.M.V.RAJENDRAN NAIR

RESPONDENT(S)/COMPLAINANT/STATE :

- 1. MICHAEL,
S/O. LATE MICHAEL, PULLIKKATTIL HOUSE,
KARIMPA AMSHAM DESHAM, MANNARKKADU TALUK,
PALAKKADU DISTRICT.**
- 2. STATE OF KERALA,
REPRESENTED BY THE STATE PROSECUTOR
ATTACHED TO THE HIGH COURT OF KERALA.**

R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 26-12-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Msd.

K. RAMAKRISHNAN, J.

.....
B.A.No.9011 of 2014
.....

Dated this, the 26th day of December, 2014.

ORDER

Accused in L.P.No.142/2011 in S.T.No.902/2008 of Judicial First Class Magistrate Court, Mannarkkadu has filed this application for anticipatory bail under Section 438 of the Code of Criminal Procedure.

2. It is alleged in the petition that the above case was taken on file on the basis of a private complaint filed by the complainant alleging offence under Section 138 of the Negotiable Instruments Act. Since he did not receive summons, he could not appear before the court. But, court below had initiated proceedings under Sections 82 and 83 of Code of Criminal Procedure and thereafter, transferred the case to register of long pending cases as L.P.No.142/2011 and non bailable warrant is pending against him. If he surrenders, he will be remanded. So, he has no other remedy except to approach this court seeking anticipatory bail.

3. Heard the Counsel for the petitioner and Public Prosecutor.

4. In view of the fact that, the case is now pending as

L.P.No.142/2011 and he was declared as an absconding accused, in view of the dictum laid down in the decision reported in **State of Madhya Pradesh Vs. Pradeep Sharma [2014 (1) KHC SN 10 (SC)]**, the petitioner is not entitled to get anticipatory bail invoking the power under Section 438 of Code of Criminal Procedure. But, that will not prevent the magistrate considering the bail application if any filed by the petitioner on his surrender. So, if the petitioner surrender before the Judicial First Class Magistrate Court, Mannarkkadu and moves for recalling the warrant and releasing him on bail, then, the learned magistrate is directed to consider and dispose of the bail application on the date of filing itself after hearing the Counsel for the complainant in the case and dispose of the application in accordance with law. While disposing the case, court below is directed to consider the fact that it is a case under Section 138 of Negotiable Instruments Act which is a bailable offence.

With the above observation, the application is dismissed.

Sd/-

K. RAMAKRISHNAN, JUDGE.

Bb

[True copy]

P.A to Judge