

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

Bail Appl..No. 99 of 2015 ()

CRIME NO. 410/2012 OF BEKAL POLICE STATION, KASARGOD

PETITIONER/ACCUSED:

NOUFAL M.H., AGED 31 YEARS,
S/O.KHADER MOUVAL HAMZA,
SHAHANAZ VILLA, P.O.PANAYAL,
BEKAL, HOSDURG TALUK,
KASARAGOD DISTRICT.

BY ADV. SRI.A.ARUNKUMAR

RESPONDENTS/COMPLAINANT/STATE:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

2. THE STATION HOUSE OFFICER,
(CRIME NO. 410/2012 OF BEKAL POLICE STATION,
KASARAGOD DISTRICT.) - 671 314.

BY PUBLIC PROSECUTOR SRI. JOBY JOSEPH

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
22-07-2015, ALONG WITH BA. 101/2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
B.A.Nos.99 & 101 of 2015
.....

Dated this the 22nd day of July, 2015.

O R D E R

The sole accused in Crime Nos.410/2012 and 841/2013 of Bekal police station has filed these applications for anticipatory bail in those cases under section 438 of the Code of Criminal Procedure.

2. The case of the prosecution in Crime No.410/2012 was that on the basis of the representation made by the accused, the defacto complainant parted with 6 million dehrans (Rs.9 Crores) through cheque on the promise of investment of the amount in real estate business and share the profits. But the accused had not returned the amount nor had he shared the profit as promised and thereby he had committed the offence punishable under section 420 of the Indian Penal Code.

3. The allegation in Crime No.841/2013 was that he had created a passport producing false documents and by impersonation and thereby he had committed the offence punishable under sections 419, 465, 468 and 471 of the Indian Penal Code and section 12(1)(b) of the Passport Act.

4. Heard counsel for the petitioner in both the cases and the Public Prosecutor and perused the case diary file.

5. Counsel for the petitioner submitted that in both the cases allegations are the same and two cases have been registered in respect of the same incident. Investigation is almost over and his custody is not required. The entire transaction as per the allegation in the complaint had happened outside India and as such, no crime can be registered and investigated in India.

6. On the other hand, these applications were opposed by the Public Prosecutor on the ground that the accused was absconding after the incident.

7. It is seen from the case diary file in both the cases that Crime No.410/2012 of Bekal police station was registered on the basis of a complaint filed by the defacto complainant before the Chief Minister of Kerala against the petitioner alleging commission of the offence under section 420 of the Indian Penal Code, in which the defacto complainant had alleged that the accused had obtained passport by producing false documents as well, which was forwarded to the concerned police station through official hierarchy. On getting receipt of

the complaint, Bekal police had originally registered a case as Crime No.410/2012 for the offences under section 420, 465, 468 and 471 of the Indian Penal Code and Section 120(1)(b) of the Passport Act. But later it is seen from the records that the case was confined only to offence under section 420 of the Indian Penal Code and other offences were deleted and the same police had registered a suo motu crime as crime No.841/2013 of Bekal police station alleging offences under sections 419, 465, 468 and 471 of the Indian Penal Code and section 12(1)(b) of the Passport Act when they came to understand during investigation that the accused had obtained second passport by impersonating another person by name Sharafudeen by using false documents. In both these cases investigation is in progress.

8. As regards the contention of the counsel for the petitioner that since offence was committed outside India, prosecution is not possible here is not correct in view of section 188 of the Code of Criminal Procedure and the only thing required is that sanction will have to be obtained from the Central Government for prosecuting the case as against the petitioner and nothing more. It is seen from the case diary

file that steps have been taken by the investigating officer for that purpose. In spite of the fact that case is registered in the year 2012 and 2013, the petitioner has not either surrendered before the investigating officer or before the concerned court. So under the circumstances, this Court feels that it is not a fit case to grant anticipatory bail to the petitioner in both the cases invoking the extraordinary power under section 438 of the Code of Criminal Procedure. He can very well surrender before the concerned Magistrate and move for bail. If such an application is filed, the learned Magistrate is directed to consider the application after hearing the Assistant Public Prosecutor of that court and dispose of the same as far as possible on the date of surrender itself.

With the above directions and observations these applications are dismissed.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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