IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

Bail Appl..No. 742 of 2015 ()

AGAINST THE ORDER IN CRLMC 218/2015 of I ADDL.SESSIONS JUDGE, ERNAKULAM
DATED 2.2.2015

AGAINST THE ORDER/JUDGMENT IN CC 92/2013 of ADDL.C.J.M., ERNAKULAM
CRIME NO. 92/2013 OF PANAGAD POLICE STATION , ERNAKULAM

PETITIONERS/ACCUSED 6 & 7:

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1. P.ASHIQUE, AGED 45 YEARS
   S/O.KOYA P.P, RESIDING AT 28/729, PONNAMPARAMATH HOUSE
   CHEVAYUR.P.O., KOZHIKODE.

2. SHAMINA, AGED 42 YEARS
   W/O.ASHIQUE, RESIDING AT 28/729, PONNAMPARAMATH HOUSE
   CHEVAYUR.P.O., KOZHIKODE.

BY ADVS.SRI.C.P.MOHAMMED NIAS
SRI.S.M.PRASANTH
SRI. DINESH C.
SRI. RENJITH G.
ASHA BABU
JINNU SARA GEORGE
SRI.K.RAMAKUMAR (SR.)
SMT.AMMU CHARLES

RESPONDENTS/STATE & COMPLAINANT:

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

2. THE ASSISTANT COMMISSIONER
   CRIME DETACHMENT, KOCHI CITY, ERNAKULAM DISTRICT
   PIN-682 024.

ADDL.R3

3.G.VENKITESHWARA PRABHU, AGED 33 YEARS,
S/O.GOPALAKRISHNA PRABHU, H.NO.8/1013,
KARTHIK NIVAS, R.G.PAI ROAD, COCHIN-682 002, ERNAKULAM

IMPLEADED AS ADDITIONAL 3RD RESPONDENT AS PER ORDER DATED 13.3.3015

BY ADVS. SRI.ASHIK K.MOHAMMED ALI
SMT.SAJNA T.UMMER
SMT.V.RAIMA RAMESH
R1 BY PUBLIC PROSECUTOR SRI.C.RASHEED

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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K.ABRAHAM MATHEW J.

B.A.No.742 of 2015

Dated this the 13th day of March, 2014

ORDER

Application filed under Section 438 Cr.P.C.

2. Petitioners are the 6th and 7th accused in Crime No.92 of 2013 of Panagad Police Station. They are Managing Director and Full-time Director of the 5th accused who is an authorised agent and dealer of BMW cars in Kerala manufactured by the first accused company. Accused 2 to 4 are its former or present directors of the first accused company. The 8th accused is the sale consultant of the 5th accused dealer.

3. On 29.6.2012 additional 3rd respondent purchased a car from the 5th accused dealer, for which he paid Rs.44,51,283/-. The petitioners and the other accused had made him believe that the car was manufactured in March, 2012, which was why he purchased it. The sale certificate, the vehicle data sheets and the insurance certificate given to him showed the year of manufacture as 2012. On the basis of these documents he got permanent registration showing the year of manufacture as 2012. On 22.7.2012 he was returning in the car from Tirupathi in Andhra Pradesh, when all of a sudden the vehicle stopped in the middle of the road. The vehicle had run 1657 KM only. It was towed to the workshop of the petitioners and returned after ten days. On 4.12.2012 additional 3rd respondent left for Tirupathi in the car, when it broke down at

Parur, 30 KM from his house. It had run only 5480 KM. Again the 5th accused dealer towed it to its workshop. The 3rd respondent came to know that the dealer gave him a defective vehicle. His further enquiry revealed that the vehicle was manufactured in 2011 and not 2012 as represented to him by the accused through their advertisements and statements of the 8th accused. In the documents presented by the dealer for temporary registration the year of manufacture was shown as 2011. But in the documents given to the 3rd respondent for getting permanent registration the year was shown as 2012. In the insurance certificate the year was originally 2011, which was corrected as 2012. The 3rd respondent spent Rs.53,00,000/- in connection with the purchase of the vehicle. The petitioners and the other accused committed the offences of criminal conspiracy, cheating, forgery and other allied offences punishable under Sections 120B, 420, 463, 465, 467, 468 and 471 IPC. This, in brief, is the prosecution case.

4. The petitioners filed B.A.Nos.691 of 2013 and 854 of 2013 in this court for anticipatory bail. Those applications were dismissed as withdrawn. Thereafter, they filed Crl.M.C.No.218 of 2015 in the Sessions Court under Section 438 Cr.P.C. In the Bail Application the filing of applications before this court and their dismissal were not disclosed. On that ground the learned Sessions Judge dismissed the application.

5. Learned senior counsel Sri.K.Ramkumar appearing for the petitioners submitted that in the complaint filed by the 3rd respondent there are no allegations against the petitioners and there are specific allegations only against the 8th accused, who is the sale consultant of the dealer. In support of his argument that in the absence of specific allegations directors of a company cannot be arrayed as accused he relies on the decisions of the Supreme Court in **Maksud Saiyed v. State of Gujarat and others ((2008)5 SCC 68), Maharashtra State Electricity Distribution company Limited and another v. Datar Switchgear Limited and others ((2010)10 SCC 479)** and **Thermax Limited and others v. K.M.Johny and others ((2011)13 SCC 412)**. What can be gathered from these decisions is that merely because a person happens to be director of a company he shall not be made an accused where the allegation is that some members of the staff of the company committed certain offences. In this case learned counsel for the 3rd respondent submits that there are specific allegations against the petitioners. He has brought to my notice the averments in Annexure-A3 complaint filed by the 3rd respondent. In the complaint it is stated:"The sale of the old vehicle to the complainant was effected by the 5th accused with the full knowledge and concurrence of accused 1 to 4 and 6 to 8". Again it is stated: "Forgery and fabrication of the documents were done by

the 5th accused with full knowledge and concurrence by the accused Nos.1 to 4 and 6 and 7”. “There was an agreement between amongst accused to commit cheating and deceiving the complaint. Each accused 'have' acted in furtherance of their common intention to cheat the complainant”, is at yet another averment in the complaint. This is the reason why Section 120B IPC also is shown in the complaint. There is no merit in the argument of the learned Senior counsel that there are no specific allegations against the petitioners. Moreover,the manner in which the offences were committed reveals that without the active participation of the petitioners the offences could not have been committed. The petitioners have been arrayed as accused not for the mere reason that they are directors of the 5th accused company.

6. There is no dispute that temporary registration was obtained by the dealer and in the papers presented to the RTO the year of manufacture of the vehicle was shown as 2011. It is also an admitted fact in the papers presented before the RTO for obtaining permanent registration the year of manufacture was shown as 2012. The following statements in the petitioners bail application is relevant. “When the temporary registration was given by the dealers the year of manufacture was shown as 2011. While it appears at some stage the year of manufacture in the vehicle data sheet was shown as March 2012”. In the Bail Application the

petitioners neither admit or disown the false entries made in the papers given to the 3rd respondent for obtaining permanent registration. The submission of the learned Senior counsel that in the documents given to the 3rd respondent for obtaining permanent registration the year of manufacture was shown as 2011 and not 2012 and the 3rd respondent alone is responsible for producing the documents showing that the year of manufacture was 2012 has no merit.

7. There is no dispute that it was on the basis of the papers presented by the 5th accused dealer the temporary registration was obtained and those papers showed that the year of manufacture was 2011. There was no means for the third respondent to know it. He has filed a copy of the affidavit filed by the 5th accused dealer before the RTO after the dispute arose. This is what is stated in the affidavit: "We had issued sale certificate and temporary registration certificate showing the manufacturing year 2011 for the above vehicle sold from our dealership. The temporary registration for the above vehicle was done at the registering authority Tripunithura and the permanent registration was done at the registering authority, Mattancherry. While reproducing the sale certificate the year of manufacturing was mentioned as 2012 due to a clerical mistake from our office". This explicit statement in the affidavit leaves no room for doubt that it was the 5th accused dealer who showed the

year of manufacture as 2012 in the papers given to the 3rd respondent. The only question that remains to be answered is whether the mistake was a clerical one as stated in the affidavit.

8. It is appropriate to mention the history of the case now. It was on the information given by the 3rd respondent the police registered this case. The 3rd respondent sent a complaint to the Transport Commissioner who ordered an enquiry into the allegations. The then RTO Sri.B.J.Antony informed the police about the commission of the offence, on the basis of which the police registered Crime No.774 of 2014 of Panagad Police Station. He stated in the complaint that it was with the connivance of the 3rd respondent (purchaser) the dealer committed the offences. So the police made the 3rd respondent an accused in that case. Meanwhile, police conducted investigation into the allegations. The 3rd respondent has produced a copy of the interim report submitted by P.M.Basheer,Motor Vehicle Inspector, Mattancherry. He reported that his enquiry revealed the following facts.

> "1) Mr.G.Venkiteswara Prahbu, has booked a BMWX3 x Drive 20d CBU and the Dealer M/s.Platino Classic has accepted the payment and thereby both the parties entered into a contract of sale.
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> 2) Dealer, M/s.Platino Classic has uploaded on line Vehicle data sheet for obtaining temporary Registration using dealer log in users ID and secret pass word. By up loading required data, they have obtained temporary registration from ARA, Thripoonithura, valid from 28/06/12 to 27/07/2012. As per the Vehicle Data Sheet vide

> number 21/E/49311/2012 dated 28/06/2012 year of manufacture and month of manufacture were mentioned as 2012 March.
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> 3) As per the sale letter issued in form 21 in respect of RO and which was produced by the RO before AMVI, Mattancherry for registration the year of manufacture was mentioned as 2012.
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> 4) As per the copy of the sale letter form 21, forwarded by the ARA Thripoonithura, which issued the Temporary registration, the year of manufacture was mentioned as 2011.
>
> 5) The dealer has fabricated new set of Form 21, containing false particulars for new registration of the vehicle."

A report of the Motor Vehicle Inspector, Ernakulam who conducted an enquiry also has been produced by the 3rd respondent. In these reports it is specifically stated that only the dealer could have committed the offences. It is an admitted fact that the data for registration was entered on line. Only the dealer could have made it using a password and a secret user name which were given to them. After obtaining the temporary registration the dealer was supposed to send the very same details on line to the Motor Vehicles department for obtaining permanent registration. It is very difficult to believe that computer made a clerical error while transferring or copying data which had already been stored in it. The statement in the affidavit that it was a clerical error cannot be accepted. The change in the year of manufacture was deliberately done.

9. The 3rd respondent has produced a copy of the insurance certificate given by Bajaj Alliance General Insurance company Ltd.

In this certificate the year of manufacture was originally shown as 2011. It is a computer print out. But somebody corrected the year of manufacture as 2012 with pen. It was done at the office of the dealer. The person concerned was questioned by the police under Section 161 Cr.P.C. Her statement shows that it was done without her knowledge. The dealer had a rubber stamp of the insurance company in its office. After making the correction the seal was affixed endorsing the correction. This also shows that correction was made deliberately and it was not an inadvertent mistake.

10. In the nature of the case it is quite difficult to believe that the petitioners who are the Managing Director and the Full Time Director of the 5th accused had no role in the commission of the offence. What was their actual role is yet to be ascertained in the investigation.

11. Now the question is whether on the facts of the case the petitioners are entitled to an order under Section 438 Cr.P.C. Learned senior counsel Sri.K.Ramkumar submits that custodial interrogation of the petitioner is not necessary as the whole case depends upon documentary evidence. But it may be noted that this is not a solitary incident. The investigation has revealed that in respect of at least 33 other vehicles also the same offences have been committed, which shows that there was a conspiracy to commit the offences. Prima facie, there has been a large scale

cheating. Records have to be called for from various offices including the office of the Insurance Company. Mention has already been made that the 3rd respondent who is only a victim and on whose complaint the police registered a case has been made an accused in Crime 774 of 2014 registered on the basis of the information given by the then RTO, Ernakulam Sri.B.J.Antony. There is no doubt that the offenders had the assistance and co-operation of the officers of the Motor Vehicle Department. Sri.B.J.Antony the then R.T.O.did not like the 3rd respondent filing a complaint against the dealer. Without any compunction he raised false allegation against the victim that it was with his connivance the dealer committed the offences. There was no foundation for such an allegation. In fact when he was questioned by the police he disowned this allegation. Why did he raise the allegation against the victim knowing fully well that it was false. A thorough investigation is necessary to ascertain who all are involved in the commission of the offences. The role of the then RTO Sri.B.J.Antony in the incident should be investigated into in detail. I hope that his superior officers will take notice of his involvement in the incident and of his filing false complaint against the 3rd respondent, who is only a victim and who set the criminal law in motion against the offenders.

12. There is no doubt that the petitioners are very influential, which is why they could influence the then RTO to get a false case

registered against the victim. There is every chance of the petitioners influencing and intimidating the witnesses and destroying the evidence. This is not a fit case to invoke the jurisdiction of this court under Section 438 Cr.P.C.

In the result, this Bail Application is dismissed.

Sd/-

K.ABRAHAM MATHEW,
JUDGE

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H/o. copy today itself.

/True copy/

P.S.to Judge