

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

Bail Appl..No. 1083 of 2015

CRIME NO. 223/2015 OF CENTRAL POLICE STATION , ERNAKULAM

PETITIONER(S)/ACCUSED 1 & 2 :

1. PAUL ANTONY, AGED 59 YEARS,
S/O.ANTONY, ATTOKKARAN HOUSE, KADUKUTTY,
CHALAKKUDY.
2. PETER, S/O.CHACKO, AGED 50 YEARS,
HOUSE NO. 1502, PATTALAM, FORT KOCHI,
KOCHI -1.

BY ADV. SRI.T.K.AJITHKUMAR (VALATH)

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

*** ADDITIONAL R2 IMPEADED**

2. THOMAS SHANTY, AGED 49 YEARS,
SON OF THOMAS, RESIDING AT GRACE BHAVAN,
KOONAMKUZHY, PUNALUR VILLAGE, PUNALUR TALUK,
NOW RESIDING AT INFRA GALLANT BUILDING, FLAT NO.8B,
LAYAM ROAD, ERNAKULAM, KOCHI- 682 035.

*** ADDITIONAL R2 IS IMPEADED AS PER ORDER DATED 13.07.2015 IN
CRL.M.A.NO.1914 OF 2015.**

**R1 BY PUBLIC PROSECUTOR SMT.M.G.LISHA
R2 BY ADV. SRI.JOHNSON GOMEZ**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 13-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

SUNIL THOMAS, J.

B.A. No.1083 OF 2015

Dated this the 13th day of July, 2015

O R D E R

The petitioners are accused Nos. 1 and 2 in crime No.223/2015 of Central Police Station, Ernakulam, for offences punishable under Sections 457,380,188 and 34 of the IPC.

2. The allegation of the prosecution is that on 7/2/2015 at some time in between 7.30 p.m. and 9.30 p.m. the accused herein, along with the third accused trespassed into the business premises, in violation of an order of injunction passed against them by the Munsiff Court and committed theft of computer, laptop and furnitures. A complaint was laid before the police, who have registered the crime. The above accused seeks pre arrest bail.

3. The defacto complainant has filed Criminal M.A.No.1914/2015 to get himself impleaded in the present proceedings. The above application is allowed. Heard the learned counsel for the petitioners, the learned counsel for the defacto complainant and the learned public prosecutor.

4. It appears that there are rival claims in relation to a running business concern. According to the defacto complainant, he

had obtained a power of attorney from one Abdul Kalam of Bombay, for the purpose of conducting the above business, in Ernakulam. According to the defacto complainant, he paid Rs.2,00,000/- to the said Kalam and Rs.1,00,000/- to the first accused herein. Thereafter, on the strength of the power of attorney, he had furnished the office room investing huge amount. There were certain other arrangements between the parties. It is further submitted that thereafter rival claim was set up by the petitioners herein.

5. On the other hand, the contention set up by the learned counsel for the accused herein is that the first accused had obtained a power of attorney from the above Kalam, after the earlier power of attorney with the defacto complainant was revoked. Hence, he has also set up some rival claims in relation to the running of the business. It is brought on record that both sides have filed civil suits against each other as O.S.No.1449/2014 and O.S.No.1618/2014. The defacto complainant herein claimed to have obtained an injunction, against the accused herein. The crux of the allegation is that in breach of the above injunction order, movable items were taken away by the petitioners herein.

6. Evidently, there are claims and rival claims. The question as to whether the movable items have been removed and if so, whether

it is in breach of the terms of the injunction order depends upon the rights of the parties. This aspect is essentially one of civil in nature. It is also brought on record that the defacto complainant taken out a commission to evidence the items which were in the office.

7. In the above scenario, when the allegation of criminal act by the petitioners is basically a question regarding the possession as on the date of commission of the above offence, I feel it may not be proper to grant custodial interrogation of the petitioner at this juncture. Hence, I am inclined to grant bail to the petitioners, subject to the following conditions:

i). The petitioners shall appear before the Investigating Officer on 22/7/2015 between 10 and 11 a.m. They shall undergo interrogation and thereafter in the event of they being arrested, they shall be released on bail on each of the petitioners executing a bond for a sum of Rs.60,000/- (Rupees Sixty thousand only) with two sureties for the like sum each.

ii). Each of the petitioner shall appear before the investigating officer as and when called for and co-operate with the investigation. Co-operating with the investigating agency includes, production of documents, registers and other material documents which, the petitioners claim, are in their possession and which the investigating

agency in the course of investigation feels that they are in the custody of the petitioners and are essential for investigation.

Iii). They shall not threaten, coerce or intimidate the defacto complainant or his witnesses.

The petition is allowed as above.

Sd/-

SUNIL THOMAS
Judge

dpk

/True copy/ PS to Judge.

