

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 8TH DAY OF MAY 2015/18TH VAISAKHA, 1937

Bail Appl..No. 1971 of 2015

AGAINST THE ORDER IN CRL.M.C NO. 266/2015 of II ADDL. SESSIONS
COURT, ERNAKULAM DATED 10-02-2015
CRIME NO.659/2014 OF ANGAMALI POLICE STATION, ERNAKULAM

PETITIONER/PETITIONER:

MARIYAMMA SEBASTIAN, AGED 50 YEARS,
W/O.SEBASTIAN, POOVATHINKAL HOUSE,
VADAVATHOOR
KOTTAYAM.

BY ADV. SMT.MEREENA JOSEPH

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM (ON BEHALF OF SUB INSPECTOR OF POLICE
ANGAMALI POLICE STATION)

BY PUBLIC PROSECUTOR SRI.ROY THOMAS

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
08-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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P.UBAID, J.

B.A No.1971 of 2015

Dated this the 8th day of May, 2015

O R D E R

The petitioner herein seeks pre arrest bail under Section 438 of the Code of Criminal Procedure on the apprehension of arrest in connection with Crime No.659/2014 of the Angamali Police Station registered under Section 420 r/w 34 of the Indian Penal Code.

2. The prosecution case is that under an offer to arrange Visa for employment abroad, the petitioner received an amount of ₹2,25,000/- from the complainant but later failed to provide Visa, and thus cheated the complainant. The case of the petitioner is that the amount was in fact received by one Jabbar against whom the complainant has already preferred another complaint, and the said crime is now under investigation.

3. This application for pre arrest bail is opposed by the learned Public Prosecutor on the ground that the custodial interrogation of the petitioner is absolutely necessary as part of investigation, and that the accused is now released, it will definitely obstruct the proper and effective investigation.

4. On hearing both sides, and on a perusal of the materials including the case diary I find that the petitioner cannot be immediately released under Section 438 of the Code of Criminal Procedure. Custodial interrogation of the petitioner is felt necessary for the collection of some materials as part of effective investigation. Still continued detention for days in custody is not felt necessary in the particular facts and circumstances of the case. The petitioner will have to be interrogated in custody for a few hours to collect the necessary materials for a successful prosecution. After necessary interrogation, the petitioner can be released on appropriate conditions. The petitioner will have to surrender before the investigating officer for such interrogation. After necessary interrogation is over, the petitioner will have to be produced before the learned Magistrate having jurisdiction, and if the learned Magistrate is well satisfied that interrogation of the petitioner is over, she can be released on appropriate conditions. If it is found otherwise that the petitioner did not co-operate or took a defiant attitude during interrogation, or that detention of the petitioner is necessary for the collection of necessary materials which the accused did not disclose during

interrogation, the petitioner will have to be remanded in judicial custody, and the request for regular bail will have to be considered by the learned Magistrate appropriately after substantial part of investigation is over.

5. In the result, this application for bail is disposed of as follows:

a) The petitioner will surrender before the investigating officer before 9 am. on any day within ten days from this date for the purpose of interrogation as part of investigation.

b) After necessary interrogation, the investigating officer will produce the petitioner before the learned Magistrate having jurisdiction by 4 pm. on the date of arrest itself.

c) If the learned Magistrate is satisfied that the interrogation as part of investigation is over, and that there is no necessity of detention of the petitioner in custody, the petitioner can be released on appropriate conditions.

d) If it is found otherwise that the petitioner did not in fact co-operate, or that her

detention is felt necessary for a reasonable period, for effective investigation, and for collection of the materials which the petitioner did not disclose during investigation, the learned Magistrate can remand the petitioner to judicial custody. The learned Magistrate will have to take decision on the said aspect independently and judiciously, without being influenced or carried away by police report. In case of remand, the application for regular bail will have to be considered by the learned Magistrate judiciously.

**P.UBAID
JUDGE**

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