IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

Bail Appl..No. 3590 of 2015

CRIME NO. 2051/2015 OF PERUMBAVOOR POLICE STATION, ERNAKULAM DISTRICT.
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PETITIONER/PETITIONER/IST ACCUSED:
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SHIHAB, AGED 37 YEARS,
S/O.USMAN, KATTETH HOUSE, EDAVOOR KARA,
EDAVOOR.P.O, PIN-683544, KOOVAPADY,
ERNAKULAM.

BY ADV. SRI.P.A.MUJEEB

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
PERUMBAVOOR POLICE STATION,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.MADHUBEN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

mbr/

SUNIL THOMAS, J.

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B.A. No.3590 of 2015

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Dated this the 10th day of July, 2015

O R D E R

This application for pre-arrest bail is submitted by the first accused in Crime No.2051/2015 of Perumbavoor Police Station for offences punishable under Sections 120 (B), 406,420 468,471 read with Section 34 IPC.

2. The allegation of the defacto complainant, who submitted a private complaint before the jurisdictional Magistrate, is that he had entrusted his original title deed with the first accused for the purpose of effecting mutation. It is alleged that the first accused conspired with the remaining accused and forged a power of attorney alleged to have been executed by the defacto complainant, deposited the title deed and other necessary documents with a bank and availed a huge loan on behalf of a firm of the first accused mortgaging the above property. It is further alleged that the above power of attorney is a forged one and the documents were placed before the

bank and the loan transaction was entered into without the knowledge of the defacto complainant. The above complaint was referred to the police by the learned Magistrate under Section 156 (3) of Crl.P.C. Apprehending arrest, the first accused has approached this Court seeking pre arrest bail.

3. Heard both sides and perused the records.

4. It is admitted fact that a loan transaction has been entered into and availed a loan of Rs. 1,04,25,000/-. The principal debtor is stated to be the first accused and the defacto complainant is the guarantor. Apparently, the above transaction has been entered into on the strength of the power of attorney. It is also brought on record that the bank has initiated legal proceedings, since the default was committed. The de facto complainant has a further case that all the notices sent by the bank were not received by him and the first accused, conspiring with the concerned postman, had appropriated the notices. The crux of the contention of the defacto complainant is that all the basic documents, except the title deed, are forged.

5. The learned counsel for the petitioner invited my attention to Annexure A3 which is stated to be an agreement entered into between the de facto complainant and the wife of the first accused. It refers to the mortgage of the property, the undertaking of the first accused to

discharge liability and in turn, the wife handing over three cheques mentioned in the documents. It is also brought on record that these cheques were subsequently presented by the de facto complainant and proceedings initiated. Notice issued as a prelude to Section 138N.I Act proceedings and its reply are produced as Annexures A4 and A5. Annexure A6 is the reply sent to the above notice, wherein the alleged execution of the cheques for the amount mentioned therein is denied by the accused. Annexure A7 is the complaint filed under Section 138 of N.I.Act. The learned counsel also relied on Annexure A9 which is the FIR in crime No.1251/2013 of Kodanadu police station, in which the first accused herein is the defacto complainant and the de facto complainant herein is the accused. The purpose of the above document is to indicate that, as back in 2013, in the FIS itself, the de facto complainant therein had referred that the title deed has been mortgaged and loan availed from the Bank. Learned counsel contended that even in 2013, he had disclosed that the property stood mortgaged. It is also brought on record that the petitioner herein had sought police protection against the defacto complainant as the 5th respondent. It is evidenced by Annexure A10.

6. All the documents mentioned above indicate that there had been a series of transactions between all the accused and the de facto

complainant. It shows that parties had several monetary transactions. The alleged documents are the documents produced before the bank. It has to be presumed that after necessary verification, loan was released. The case of the defacto complainant that all the documents in relation thereto, including the power of attorney are forged documents, is a matter for investigation. Materials available on record at least from 2013 onwards indicate that parties are known to each other, had several transactions and later had strained relationship and even in the statement given to the police, the petitioner herein has disclosed about the existence of bank liability. The allegation of the de facto complainant has to be appreciated in the background that though he contends that the original title was entrusted at least in 2013 for mutuation, he never enquired about the original title deed , even after the relationship between the parties got strained. The allegation against the petitioner herein has to be appreciated in the above background.

7. Considering the above facts, the financial transaction which both sides alleged to have been entered into between each other, the strained relationship between the parties and the further fact that the documents which are allegedly forged by the accused form part of the records maintained by the bank and that the allegation against

the accused is sought to be proved essentially through the documentary evidence, I feel that the custodial interrogation may not be essential at this point of time on the basis of the materials now brought on record. Hence, I am inclined to grant bail to the petitioner subject to the following stringent conditions:

i). The petitioner shall appear before the investigating officer and offer himself for interrogation on 22/7/2015 between 8 am and 10 a.m.. Thereafter, if the investigating agency feels that he is liable to be arrested, he shall be released on bail on he executing a bond for Rupees One Lakh with two sureties for the like sum each.

ii). He shall appear before the Investigating Officer as and when called for and he shall co-operate with the investigation. His co-operation with the investigating officer includes, production of all essential documents in relation to the transaction with the first accused, which in the course of investigation, the investigating agency feels are necessary for the further progress of the investigation, and are in the custody of the petitioner herein.

Iii) He shall surrender his passport before the jurisdictional magistrate within a period of one month from today and if he is not possessing the above, he shall file an affidavit regarding it.

iv). He shall not threaten, coerce or intimidate the witnesses.

v). It is clarified that in the event of any other material being brought out showing the complicity of the petitioner herein, this order will not preclude the investigating agency from approaching this court to pass such orders.

The petition is allowed as above.

Sd/-

SUNIL THOMAS
Judge

dpk

/True copy/ PS to Judge.