

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Bail Appl..No. 4694 of 2015

CRIME NO. 291/2015 OF ADHUR POLICE STATION , KASARAGOD DISTRICT

PETITIONER(S)/ACUSED NO.1 :

**MUHAMMED KUNHI, AGED 52 YEARS,
S/O.ABDHUKKA, RESIDING AT KUNNIL HOUSE,
BAVIKKARA KUNNIL, MULIYAR VILLAGE AND POST,
KASARAGOD TALUK AND DISTRICT.**

**BY SRI.S.SREEKUMAR (SENIOR ADVOCATE)
ADVS.SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA
SRI.AJAY BEN JOSE**

RESPONDENT(S)/COMPLAINANT :

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

BY PUBLIC PROSECUTOR SMT.TY.LALIZA

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 27-10-2015, ALONG WITH BA.NO.5742 OF 2015 & BA.NO.6406 OF 2015,
THE COURT ON 29-10-2015 PASSED THE FOLLOWING:**

Msd.

A.HARIPRASAD, J.

B.A. Nos.4694, 5742 & 6406 of 2015

Dated this the 29th day of October, 2015

COMMON ORDER

B.A.No.6406 of 2015 is an application under Section 439 of the Code of Criminal Procedure and B.A.Nos.4694 of 2015 and 5742 of 2015 are applications under Section 438 of the Code of Criminal Procedure.

2. Petitioners are the accused in Crime No.291 of 2015 of Adhur Police Station of Kasaragod District. The offences alleged are punishable under Sections 463, 468 and 471 read with Section 34 of the Indian Penal Code. It is alleged that the accused have fabricated documents and on the basis of falsely created documents, they tried to grab the Government land.

3. Heard the learned Senior Counsel and the counsel appearing for the petitioners and the learned Prosecutor.

4. Petitioner in B.A.No.6406 of 2015 (fourth accused) was arrested on 02.10.2015. He is said to be a businessman permanently settled in Goa. According to the learned counsel for the petitioner, he is no way connected with the crime. Considering the period of detention and the stage of investigation, I am of the view that the petitioner can be enlarged on bail with following conditions:

i. Petitioner shall be released on bail on executing a bond for ₹50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate having jurisdiction.

ii. The sureties shall produce documents to establish their identity and solvency. The lower court need not insist on the solvency certificate, but other documents can also be perused to find out whether the sureties are solvent or not.

iii. Petitioner shall provide to the investigating officer his permanent address, phone number and e-mail id, if any, for contact.

iv. The petitioner shall appear before the Investigating Officer as and when directed by him until final report is filed.

v. The petitioner shall not indulge in any offence while on bail.

v. The petitioner shall not influence or intimidate the witnesses or meddle with the investigation in any manner.

If any of the above conditions is breached by the petitioner, the lower court concerned is free to cancel bail without referring the matter to this Court.

5. Insofar as petitioner in B.A.No.5742 of 2015 (third accused) is concerned, the allegation against him is that as Village Assistant, he

received basic tax without verifying records. According to the prosecution case, the Government property was mutated in the name of Beefathima on the basis of certain concocted documents. Subsequently, Beefathima was asked to execute a settlement deed thereby conveying the property in the name of her son. Allegation against the petitioner is only that he received basic tax without verifying the revenue records. Considering the nature of allegations, following directions are issued in respect of petitioner in B.A.No.5742 of 2015 (third accused):

i. Petitioner shall surrender before the investigating officer within a period of one week and submit himself for interrogation. Thereafter he shall execute a bond for ₹25,000/- (Rupees twentyfive thousand only) with two solvent sureties each for the like sum to the satisfaction of the investigating officer. In that event, he shall be released on bail in Crime No.291 of 2015 of Adhur Police Station.

ii. The sureties shall produce documents to establish their identity and solvency. The lower court need not insist on the solvency certificate, but other documents can also be perused to find out whether the sureties are solvent or not.

iii. He shall appear before the investigating officer as and when directed in writing and co-operate with the investigation in the matter.

iv. He shall not influence or intimidate the witnesses.

In case of violation of any of the above conditions, the officer concerned is free to arrest the petitioner as if no order is passed.

6. Petitioner in B.A.No.4694 of 2015 is the first accused in the crime.

7. Learned Senior Counsel appearing for the petitioner contended that he has no connection with the offence and he is falsely implicated in the case.

8. Learned Prosecutor opposed the bail application.

9. I have perused the report submitted by the investigating officer. It is the specific case of the prosecution that accused 1 and 2 together forged registers and destroyed official documents. Further, they fraudulently created patta. These facts were revealed in the investigation. The materials in the case diary produced for perusal show that questioning of this petitioner in custody will be highly essential for proper advancement of the case. Therefore, this petitioner is not entitled to get pre-arrest bail. Petitioner in the event of surrendering before the investigating officer within a period of one week shall be questioned. Thereafter, the investigating officer shall produce him before the Magistrate having jurisdiction on the date of surrender itself. In that event, he is free to move for bail and the learned Magistrate shall consider the application on merits and pass appropriate orders as expeditiously as possible, if possible on the date of

production itself. If petitioner does not surrender before the investigating officer within the said time, the investigating officer is free to arrest him, as if no order is passed in this case.

A. HARIPRASAD, JUDGE.

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