

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

Bail Appl..No. 5062 of 2015

**CRIME NO. 775/2015 OF KALPAKANCHERY POLICE STATION,
MALAPPURAM DISTRICT**

PETITIONER(S)/ACCUSED :

**KHADER, AGED 55 YEARS,
S/O. KUNHIMUHAMMED, PARAPURATH HOUSE, KODAKKAL,
THIRUNAVAYA, MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/STATE & COMPLAINANT :

- 1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 031.**
- 2. THE SUB INSPECTOR OF POLICE,
KALPAKANCHERY POLICE STATION, MALAPPURAM DISTRICT.**

BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 01-09-2015, ALONG WITH BA NO.5076 OF 2015 AND CONNECTED
CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Msd.

A.HARIPRASAD, J.

B.A Nos.5062, 5076, 5080 & 5091 of 2015

Dated this the 1st day of September, 2015.

COMMON ORDER

Petitions under Section 438 Cr.P.C seeking pre-arrest bail in various crimes.

2. Heard Sri.Grashious Kuriakose learned Senior Counsel for the petitioner in B.A No.5080 of 2015, Sri.Babu S.Nair learned counsel for the petitioners in B.A Nos.5062 and 5091 of 2015 and Sri.Manu Ramachandran learned counsel for the petitioners in B.A No.5076 of 2015.

3. Police registered the cases against the petitioners for offences punishable under Sections 20, 21 and 23 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (in short 'Act of 2001) and Section 379 I.P.C.

4. Learned Senior Counsel Sri.Grashious Kuriakose contended that going by the principles stated in the decision in ***State of N.C.T of Delhi v. Sanjay (2014(3) K.L.T 1033 (SC))***, addition of Section 379 I.P.C along with offences falling under the Act of 2001 cannot be faulted. Section 22 of the Act of 2001 also gives an

indication to the effect that offences falling under other enactments are not excluded by the Act. Learned Senior Counsel submitted that the offence of theft in the strict sense may not lie as a person is legally entitled to remove sand, if he fulfills the conditions in the Act of 2001. In other words, to begin with there is a legal right for extraction of sand, however subject to the restrictions in the Act. Therefore, the offence of theft may not be attracted in all cases. I am afraid, I cannot agree with this submission, in view of the decision on the point rendered by the Supreme Court in *Sanjay's* case (supra).

5. Sri.Babu S.Nair learned counsel for some of the petitioners contended that in cases involving sand mining the seizure of the contraband and vehicle is the major parts in investigation. That had been done in these cases. There is no need for custodial interrogation as almost entire investigation is over.

6. Learned Public Prosecutor opposed the bail applications contending that the accused have to be questioned in connection

with the crime to unearth the details relating to illegal transportation of sand and complicity of other accused, if any. Considering the objective of the Act and the societal impact on such offences, I am of the view that the petitioners are not entitled to get any pre-arrest bail under Section 438 Cr.P.C in such matters. Therefore, the petitions are disposed with following directions :

The petitioners shall surrender before the Investigating Officer within a period of 15 days from today and submit themselves for interrogation. Thereafter, they shall be produced before the learned Magistrate having jurisdiction on the same day. The petitioners are free to move for regular bail before the court below. In that event, the application shall be considered on merits as expeditiously as possible, if possible on the date of surrender itself.

Sd/-

**A.HARIPRASAD,
JUDGE.**

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P.A to Judge