

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

Bail Appl..No. 5437 of 2015 ()

CRIME NO. 1186/2015 OF CHADAYAMANAGALAM POLICE STATION, KOLLAM DISTRICT

PETITIONER/ACCUSED:-

**ABDUL SAMAD, AGED 50 YEARS,
S/O.MOHAMMED BUHARI, BEEMA HOUSE,
AYOOR, KOLLAM.**

**BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY**

RESPONDENT(S)/STATE:-

- 1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.
(CRIME NO.1186/2015 OF CHADAYAMANGALAM POLICE STATION,
KOLLAM DISTRICT).**
- 2. STATION HOUSE OFFICER,
CHADAYAMANGALAM POLICE STATION,
KOLLAM DISTRICT - 691 534. (CRIME NO.1186/2015 OF
CHADAYAMANGALAM POLICE STATION,
KOLLAM DISTRICT).**

***ADDL.R3 IMPEADED**

***ADDL.R3: LAKSHMI DEVI.S.,
W/O.SREEKUMAR.V.T., AGED 53 YEARS,
RESIDING AT P 47, PULLAIKONAM,
SASTHAMANGALAM, THIRUVANANTHAPURAM-695 010**

***ADDL.R3 IS IMPEADED AS PER ORDER DATED 14/10/2015 IN
CRL.M.A.NO.9529/2015 IN BA.NO.5437/2015.**

**R1 & R2 BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN
ADDL.R3 BY ADV. SRI.PRATHAP. S.R.K.**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 30-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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RAJA VIJAYARAGHAVAN V, J.

B.A.No.5437 of 2015

Dated this the 30th day of October, 2015

O R D E R

This is an application for anticipatory bail filed under S.438 of the Code of Criminal Procedure.

2. The petitioner is the first accused in Crime No.1186/2015 of Chadayamangalam Police Station. The said crime has been registered for offence punishable under S.420 r/w S.34 of the IPC.

3. The prosecution allegation is that, on 25.02.2009, the petitioner herein and the informant, Lakshmi Devi, who is the Director and Principal of Vidyagiri School, Vellayambalam, Trivandrum entered into an agreement as per which petitioner herein agreed to procure a loan of Rs.26 Crores for the aforesaid Lakshmi Devi. Towards

processing charges, the petitioner demanded and obtained a total sum of Rs.19,50,000/-. However, the petitioner failed to secure the loan in terms of the agreement.

4. The informant has filed an application seeking impleadment and as per order dated 14.10.2015, the informant has come on record as the additional third respondent.

5. I have heard the learned counsel appearing for the petitioner, the learned Public Prosecutor and also the learned counsel appearing for the third respondent.

6. The learned counsel appearing for the petitioner has submitted that even if the allegations raised by the informant is taken as true, the transaction is purely civil in nature and there is no question of attracting S.420 of the IPC. It was pointed out that the only request made by the 3rd respondent in Annexure R 2 (c) complaint submitted before

the DGP is that the amount be ordered to be returned as early as possible. Absence of allegations of criminal intent at the inception was also advanced as a ground for obtaining the reliefs sought for. It was finally submitted that the loan could not be disbursed because of the inability of the 3rd respondent to provide security.

7. On the other hand, the learned counsel appearing for the third respondent has produced Annexure R2(a) & R2 (b), which are the memorandum of agreement dated 25.02.2009 and also the agreement deed dated 17.04.2009 purportedly executed between the petitioner as well as the third respondent detailing the monetary transactions and submitted that the offence was squarely attracted and reliefs may not be granted.

8. From the rival submissions, it is obvious that some amount has changed hands and the third respondent had to close down a school due to lack of finance.

9. After having heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the third respondent, I am of the considered view that this is a case revolving entirely on documentary evidence. It does not appear from the facts and circumstances that custodial interrogation of the petitioner is warranted.

Therefore, considering the entire facts and circumstances, I am of the considered view that the petition can be disposed of with the aforesaid directions:

- i. The petitioner shall, within 10 days, surrender before the investigating officer and submit himself for interrogation. Thereafter, he shall execute a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties for the like sum to the satisfaction of the investigating officer. In that event, he shall be released on bail in the aforesaid crime.

ii. The petitioner shall appear before the investigating officer between 10.00 a.m. and 1.00 p.m on next four consecutive days and submit himself for interrogation.

iii. If the investigating officer requires the attendance of the petitioner on any further occasion than the days mentioned above, he may direct the petitioner to appear in writing.

iv. The petitioner shall surrender his passport before the Magistrate concerned within a week from the date of appearance before the investigating officer.

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

vi. The petitioner shall not leave India without the permission of the learned Magistrate concerned.

vii. If any of the conditions above is violated, the Magistrate having jurisdiction is empowered to cancel the

bail in accordance with law without
referring the matter to this Court.

The application is disposed of as above.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE.**

Bb

[True copy]

P.A to Judge