

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

Bail Appl..No. 6044 of 2015

**CC 748/2014 OF ADDL.CHIEF JUDICIAL MAGISTRATE COURT,
THIRUVANANTHAPURAM.
CBCID CRIME NO. 197/CR/TVM/2008, THIRUVANANTHAPURAM.**
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PETITIONER/1ST ACCUSED:

**SABARINATH, AGED 26 YEARS,
S/O.RAJAN, SABARI NIVAS, KODANGVILA,
KAVALAKULAM, NEYYATINKARA.**

**BY ADVS.SRI.SUMAN CHAKRAVARTHY
SMT.BREJITHA UNNIKRISHNAN**

RESPONDENT:

**THE STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA - 682 031.**

BY SENIOR PUBLIC PROSECUTOR SRI.C.RASHEED

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 18-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

A.HARIPRASAD, J.

B.A No.6044 of 2015

Dated this the 18th day of December, 2015.

ORDER

Application for bail under Section 439 Cr.P.C.

2. Petitioner is the first accused in CBCID Crime No.197/CR/TVM/2008, which is pending in C.C No.748/2011 on the file of the Addl.C.J.M, Thiruvananthapuram. The offences alleged against him are punishable under Sections 420, 409, 406, 465, 468, 109, 120(B) I.P.C and Section 45(s), 58(B), 5(A) of RBI Act, 1934.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. Prosecution case, in short, is that the petitioner started an investment company by name Nest Investment Solutions. He accepted deposits from many persons convincing them that the money would be utilised in many investment schemes whereby the depositors could get fancy returns. Later,

it was revealed that the petitioner did not make any investment as promised and the amounts were syphoned off for his personal gains. All the accused persons thereby committed the aforementioned offences.

5. Learned counsel for the petitioner contended that the petitioner alone is in custody while others were released on bail. Learned Public Prosecutor opposed the bail application contending that the petitioner, who is the kingpin in the case, absconded for about three years and therefore the investigation and consequent by the trial are delayed. After hearing the learned counsel for the petitioner and the learned Public Prosecutor, I called for reports from the Presiding Officer of the trial court asking him to state the exact stage of the matter. As per reports dated 31-10-2015 and 26-11-2015, the learned Addl.C.J.M has stated the present position of the case. According to the latest report, the case was not posted for about

two years and reason therefor is unknown. Learned counsel for the petitioner submitted that the accused never absconded and he never defied orders of the court. Annexure D is the report submitted by the Investigating Officer wherein there is an accusation that the accused did not appear on 01-12-2011 and he absconded from the court. In answer to this statement, learned counsel for the petitioner submitted that on that day none of the accused nor their counsel appeared. Petitioner cannot be blamed as the case was not properly listed. It is true that there was mistakes on the part of the trial court in not posting the case promptly and the procedure followed by the court below was also not proper. This fact has been high lighted by this Court in the order dated 17-11-2015.

6. Learned Addl.C.J.M informed this Court that some of the accused persons have filed applications for discharge and some of them have been disposed of already. There is no hitch in

starting trial as the pre-trial steps have been completed. There are eight cases in which the petitioner is involved. It is contended by the learned counsel for the petitioner that large number of witnesses have to be examined and voluminous documents have to be marked at the time of trial. Whatever that be, trial has to be begun on one day. Apprehension of the prosecution is that if the petitioner is released on bail, he may flee from justice and thereby the trial will be delayed. Learned counsel for the petitioner submitted that the family members of the petitioner are prepared to stand as sureties. Further, his entire properties have been attached and a receiver is appointed. Therefore, there is no possibility of the petitioner staying away from the court with an intention to delay the trial. Learned counsel for the petitioner submitted that he never absconded and he surrendered before the court on 21-04-2014 and remains in custody thereafter. Considering the stage of the matter, the report

submitted by the court below and also that there is no reason to delay the trial, I am not inclined to grant bail to the petitioner at present. However, it is made clear that if the petitioner moves the trial court for bail, the court below shall consider his application untrammelled by any of the observations contained in this order.

7. Learned counsel for the petitioner relying on the principles in the decision of the Apex court in ***Sanjay Chandra v. Central Bureau of Investigation ((2012)1 SCC 40)*** contended that personal liberty is a fundamental right and it shall not be curtailed without any legal justification. It is also argued that the accused charge with economic offences shall not be detained in custody, if such detention is not necessary for the purpose of investigation. The learned trial Judge shall consider all the relevant pleas raised by the petitioner in a properly constituted bail application. Court below shall also look into the expediency

of considering the petitioner's bail application before the trial starts or after starting the trial. It is also directed that the court below shall start the trial of the case at the least by the 1st day of February, 2016 and the case shall be disposed of within a period of six months thereafter.

With the above observations, this bail application is disposed of .

Sd/-
A.HARIPRASAD,
JUDGE.

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P.A to Judge