

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

Bail Appl.No. 7115 of 2014

CRIME NO. 546/2014 OF ELAMAKKARA POLICE STATION, ERNAKULAM
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PETITIONER(S)/ACCUSED:

1. NISHANTH K.DAMODARAN, AGED 41,
S/O K.V. DAMODARAN, KODAVATHUM PARAMBIL HOUSE,
MAKKANAI, MANNAM P.O., NORTH PARAVUR.
2. RAHIM P.Z., AGED 35,
S/O. ZACHARIA, POTTEKATIL HOUSE, EDAKUNNAM,
SOUTH CHITTOOR, ERNAKULAM.
3. YAZOR, AGED 32,
S/O ABDUL SALAM, VEZHAPILLY VEETTIL, VELIYATHUNADU,
UCC, ALUVA.
4. LAIJU V.H., AGED 35,
S/O HABEEB MUHAMMED, VELIYAKUNNATHU HOUSE,
FERRIC LANE, ALUVA.

**BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SMT.AMRITA JAYARAM**

RESPONDENT(S)/COMPLAINANTS:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. C.I OF POLICE,
KALAMASSERY POLICE STATION,
ERNAKULAM DISTRICT - 683 104.
3. MUAHMED FAZIL, AGED 22,
S/O. ABDUL KHADER, RAVATT HOUSE, GRAMAM POST,
VELIYANCODE, MALAPPURAM, KERALA - 679 579.

R1 & R2 BY PUBLIC PROSECUTOR SMT.LALIZA T.Y.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
19-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

B.KEMAL PASHA, J.

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B.A. No. 7115 of 2014

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Dated this the 19th day of January, 2015

ORDER

Petition filed under Section 438 Cr.P.C.

2. Petitioners are A1, A2, A6 and A7 in Crime No.546 of 2014 of the Elamakkara Police Station, registered for the offences punishable under Sections 419, 341, 365, 342, 323, 324, 294(b), 506(ii) and 395 read with Section 34 IPC.

3. The allegation against the petitioners is that on 09.08.2014 at 11 p.m., they waylaid Innova car bearing registration No.KL-27-8000, by which the defacto complainant and his friend were travelling, at Edapally signal junction, with another Innova Car bearing registration No.4040, by which the petitioners were travelling. It is alleged that A4 and A6 dragged out the friend of the defacto complainant from the car

and took him to the car by which the petitioners came. It is alleged that the petitioners and the other accused committed dacoity by taking away the Innova car bearing registration No.KL-27-8000 of the defacto complainant, an amount of Rs.3,000/- belongs to him, and also an amount of Rs.29,000/- belongs to the friend of the defacto complainant named Asif.

4. Heard learned counsel for the petitioners and learned Public Prosecutor.

5. The learned counsel for the petitioners has pointed out that the Innova car bearing registration No.KL-27-8000 belongs to Dhanya, who is the wife of the 1st accused, who is the 1st petitioner herein, and that the said car was given to a workshop for carrying out repairs and maintenance. As the said Dhanya could not raise sufficient amounts to pay the repair charges at the workshop, the vehicle was not given back to her. Thereafter, without her knowledge and consent, the workshop owner used to rent out the car to strangers. During such a transaction, the car was illegally handed over

by the workshop owner to the defacto complainant, who used to take the car to Malappuram and other distant places. The 1st petitioner was in search of the car and while so, he could locate it at Edappally. The car was taken possession of by the 1st petitioner.

6. A report regarding the ownership of the car was called for, from the investigating officer. The investigating officer has filed a report stating that the registered owner of the Innova car bearing registration No.KL-27-8000 is Dhanya, who is the wife of the 1st accused in Crime No.546 of 2014 of the Elamakkara Police Station. Therefore, an offence under Section 395, as far as the car is concerned, cannot be attracted as the car belongs to the wife of the 1st petitioner. When the defacto complainant cannot forward a valid claim with regard to the car, the other allegations also can only to be taken with a pinch of salt. Considering the present stage of the investigation and the facts and circumstances of the case, I do not think that the custodial interrogation of the

petitioners is not required for the continued investigation of this case. Further, no criminal antecedents have been reported against the petitioners. Considering all the above, I am of the view that this is a fit case wherein anticipatory bail can be granted to the petitioners.

In the result, this bail application is allowed and the investigating officer or such other police officer, who is conducting the arrest of the petitioners, is directed to enlarge the petitioners on bail in the event of their arrest on each of them executing a bond for Rs.25,000/- (Rupees twenty five thousand only) with two solvent sureties for the like sum each to the satisfaction of the officer conducting arrest, and subject to the following terms and conditions:-

- (i) The petitioners shall report before the investigating officer in between 09.00 a.m. and 11.00 a.m. on all Mondays and Thursdays commencing from 26.01.2015 for a period of three months or till the filing of the final report in this case,

whichever is earlier.

(ii) The petitioners shall not tamper with the evidence or influence witnesses.

(iii) The petitioners shall make themselves available for interrogation as and when required by the investigating officer.

(iv) The petitioners shall not involve in any offence while on bail.

It is made clear that the violation of any of the conditions stipulated above will result in the cancellation of bail.

Sd/-
B.KEMAL PASHA
JUDGE

DSV/19/1/15

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P.A. To Judge

