IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

Bail Appl..No. 7603 of 2014 ()

CRIME NO. OF KADAVANTHRA POLICE STATION NOT KNOWN TO THE PETITIONER

PETITIONERS :

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1. **DILEEP, 35 YEARS**
   S/O.NARAYANAN, 'SRUTHY' HOUSE, MELATTOOR POST
   MALAPPURAM DISTRICT - 679 326.

2. **SAIJUMON A.V., 32 YEARS**
   S/O.VIJAYAN, VIJAYA BHAVANAM, PANAVALLY POST
   CHERTHALA, ALAPPUZHA DISTRICT.

   BY ADV. SRI.R.SREEHARI

RESPONDENTS :

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1. **STATE OF KERALA,**
   REPRESENTED BY THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM, COCHIN - 682 031
   THROUGH THE STATION HOUSE OFFICER
   KADAVANTHRA POLICE STATION, COCHIN - 682 020.

2. **S.SARITH, 36 YEARS**
   S/O.LATE P.K.SOMAN, NO.4, KIRAN LANE
   THURUTHY TEMPLE ROAD, MARADU POST,
   ERNAKULAM DISTRICT, PIN - 682 304.

3. **SHAJI,**
   S/O.KUNJAPPAN, SRA 45, VELIPARAMBIL HOUSE
   KALPARA ROAD, EROOR NORTH POST, COCHIN - 682 306
   (MANAGING PARTNER, ATHULYA CONSTRUCTIONS
   REGISTERED OFFICE: PANDUKASALA, VALLAKAM POST
   KOLLAM DISTRICT, PIN - 691 548).

   R1 BY PUBLIC PROSECUTOR SMT. LALIZA T.Y.
   R2 BY ADV. SRI.JESWIN P. VARGHESE

   THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13-01-2015, ALONG WITH BA NO. 9180/2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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K.ABRAHAM MATHEW, J.

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B.A.Nos. 7603 & 9180 OF 2014

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Dated this the 13th day of January, 2015

O R D E R

Petitions filed under Section 438 of Cr.P.C.

2. Petitioners in B.A. No.7603/2014 are accused 1 and 2 and the petitioner in B.A. No.9180/2014 is the 3rd accused in Crime No.1940/2014 of Kadavanthra Police Station. The petitioners in the former application are the members on the staff of the petitioner in the other case, who is the Managing Partner of a firm. The de facto complainant is also a business-man. It is alleged that the petitioners committed theft of certain articles belonging to the de facto complainant, which were entrusted to the petitioners in B.A. 7603/2014 by the de facto complainant, and the petitioners have thus committed the offences under Sections 379,411 & 420 IPC. The learned counsel for the petitioners submits that the de facto complainant was the manager of the firm of the 3rd accused and he committed misappropriation of funds and theft of

articles belonging to the firm and the police registered a case against him on 1/11/2014 and this false case was got registered subsequently on 20/12/2014.

3. Heard the learned counsel for the petitioners and the learned counsel for the de facto complainant and the learned Public Prosecutor.

4. The petitioners admit that they are in custody of the articles which are the subject matter of the case. Their version is that the articles belong to the firm. It appears that there is a bona fide dispute between the parties as to the ownership of the property. Since the petitioners admit custody of the articles, recovery through them is not necessary. But, the police can take custody of the articles. The learned Magistrate will decide as to the entitlement of the custody of the articles, if an application is filed under Section 451 Cr.P.C. For effective investigation, the detention of the petitioners is not necessary.

5. In the result, these applications are allowed.

1). The petitioners shall be released on bail, after interrogation, on their executing a bond for Rs.25,000/-(Rupees

Twenty Five Thousand only) each with two solvent sureties each for the like sum if they are arrested by the police in connection with this case. They shall cooperate with the investigation.

2). The Investigating Officer is free to take custody of the articles which are now in the possession of the petitioners. The Investigating Officer may direct the petitioners to appear before him as and when their interrogation is necessary.

3). If an application is filed under Section 451 Cr.P.C., the learned Magistrate shall take a decision as to the person who is entitled to their custody.

Sd/-

K.ABRAHAM MAHTEW
Judge.

dpk **/True copy/ PS to Judge.**