

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

Bail Appl..No. 7928 of 2015

CRIME NO. 2137/2015 OF ARANMULA POLICE STATION, PATHANAMTITTA
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PETITIONER(S)/ACCUSED:

**BIJU MATHEW ABRAHAM,
S/O.MATHEW ABRAHAM, NANA VEETIL,
PUTHEN PARAMBIL VEEDU, KOZHENCHERY.**

**BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.BENOJ C AUGUSTIN
SRI.SEBIN THOMAS**

RESPONDENT(S)/STATE:

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

*** ADDITIONAL R2 IMPEADED**

**2. JOHN JIKKY & JIKKY JOHN, S/O.JOHN,
AGED 46 YEARS, PUTHETT HOUSE,
KOTTAMALA POST, WEST ELERI VILLAGE,
KASARGODU TALUK, KASARGODU DISTRICT.**

*** ADDITIONAL R2 IMPEADED AS PER ORDER DTD.22.12.2015 IN
CRL.MA.NO.11840/2015**

**R1 BY SENIOR PUBLIC PROSECUTOR SRI.C.RASHEED
R2 BY ADV. SRI.BIJU ABRAHAM**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
22-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

K.RAMAKRISHNAN, J.

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B.A. No. 7928 OF 2015

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Dated this the 22nd day of December, 2015

ORDER

This is an application filed by the first accused in Crime No.2137/2015 of Aranmula Police Station for anticipatory bail under Section 438 of the Code of Criminal Procedure.

2. it is alleged in the petition that the petitioner has been arrayed as first accused in the above crime on the basis of a complaint given by the additional second respondent herein alleging commission of the offence under Section 420 and 406 of the Indian Penal Code. According to the petitioner, even as per the allegations in the complaint that there was a property transaction in 2011 and the property belonging to the defacto complainant was got registered in the name of the petitioner without paying the sale consideration. Later two cheques were given, one by the petitioner and one by the second accused for the said amount which when presented were dishonoured and this

was done with an intention to cheat the complainant. Now according to the complainant, without paying the sale consideration, the petitioner is in possession of the property and on similar method he has cheated several persons and there is other crimes also registered regarding the same. According to the petitioner, even the entire allegation are accepted there is no criminal offence made out. Further on the basis of the cheque alleged to have been given by the petitioner, the complainant has already moved a complaint under Section 138 of the Negotiable Instruments Act based on the cheque of Rs.4,75,00,000/- and the petitioner moved this Court for quashing the proceedings and this Court has stayed the proceedings and thereafter, the petitioner moved a private complaint and that was pending enquiry before the Magistrate's Court. While these cases are pending, the petitioner had moved the Police again in respect of the same transaction and got the case registered. So according to him, he is entitled to get anticipatory bail.

3. The learned Public Prosecutor Shri. C. Rasheed

submitted that the petitioner was an American NRI engaged in purchase of landed properties in India by some dubious methods taking loan from the banks, submitting false documents and cheating the land owners and a crime was registered as Crime No.1433/2015 of Aranmula Police Station against the petitioner and others, on the basis of the complaint given by one N.K.Joy and he was arrested in connection with that crime and he was released on bail in that case. It is thereafter that several complaints have been received and apart from this crime, another case was also registered as Crime No.1766/2015 of Koyippuram Police Station. So he opposed the application.

4. The learned counsel appearing for the additional second respondent (defacto complainant) vehemently opposed the application on the ground that he is having fake passport and if he is granted bail, he is likely to abscond and huge amount is due from the petitioner.

5. It is seen from the documents produced as well as the submissions made by the counsel for the petitioner, defacto complainant and the Public Prosecutor that

Annexure-A1 crime was registered on the basis of the statement given by additional second respondent as Crime No.2137/2015 of Aranmula Police Station against the petitioner and another alleging offence under Section 406 and 420 of Indian Penal Code.

6. It is also seen from Annexure -A2 document produced by the petitioner that the very same defacto complainant had filed a complaint against the petitioner and others on the basis of cheque for Rs.4,75,00,000/- alleging offence under Section 138 of the Negotiable instruments Act and that was pending as CC 2515/2011 before the judicial First Class Magistrate's Court-III, Kottayam. Maintainability of that complaint was questioned by the petitioner by filing Crl.M.C4348/2014 before this Court and this Court has stayed the proceedings in that case for a particular period, which was later extended from time to time evidenced by Annexure -A4 order dated 2.12.2015.

7. It is also in a way admitted by the Public Prosecutor that in the crime registered as Crime No.1433/2015 of Aranmula Police Station registered on the

basis of a complaint given by similarly placed person, alleging offences under Sections 420 and 406 of Indian Penal Code, he was arrested and later granted bail by this Court as per order in B.A.No.1734/2015.

8. It is also seen from the First Information Statement that in respect of the same transaction, another private complaint was pending before the Judicial First Class Magistrate's Court, Pathanamthitta and inquiry still pending in that complaint.

9. Though the counsel for the petitioner submitted that it is a pure civil dispute, I am not at this stage, going into the merits of the case or expressing opinion as to whether it is a pure civil dispute or any criminal offence has been committed as it is a matter to be considered by the court on the basis of evidence. Since the petitioner has already been granted bail by this court in Crime No.1433/2015 of Aranmula Police Station after he was detained in prison for nearly 42 days and the fact that he has involved in other crime was also considered by this Court while granting bail to the petitioner in Crime

No.1433/2015 and certain conditions have been imposed for securing his presence, this Court feels that no custodial interrogation will be required as the Police has already questioned him in connection with the transaction involved in Crime No.1433/2015 and it is thereafter further crimes have been registered by alleged to be similarly placed person in respect of their properties, anticipatory bail can be granted to the petitioner with some stringent conditions. So the application is allowed with the following conditions:-

The petitioner is directed to surrender before the investigating officer in Crime No.2737/2015 of Aranmula Police Station within a week from today and on his surrender, after interrogation if the investigating officer feels that his custody is required and arrest is to be recorded, then after recording the arrest, he is directed to produce the petitioner before the Judicial First Class Magistrate's Court, Pathanamthitta and on such production if the petitioner files an application for regular bail, then the learned Magistrate is directed to release him on regular bail on following conditions:

(i) The petitioner shall execute a bond for Rs.1,00,000/- with two solvent sureties for the like sum each to the satisfaction of the concerned Magistrate.

(ii) The surety shall produce the documents to establish their identity and solvency. But the court need not insist for solvency certificate. But other documents can also be perused to find out whether the sureties are solvent or not. If the same sureties were produced, the court below is at liberty to consider as to whether they can be accepted on satisfaction of their solvency to cover the present case as well.

(iii) The petitioner shall surrender his passport before the concerned Magistrate Court and if he does not have any passport he shall swear and affidavit showing that fact. If he has already surrendered the passport, directed by any orders of the court then that fact can be brought to the notice of the said Magistrate by filing an affidavit.

(iv) The petitioner shall appear before the investigating officer for three consecutive days immediately after arrest and release for the purpose of interrogation in

connection with the above crime and thereafter appear before him for the purpose of interrogation as and when required and writing to do so till the final report is filed.

(v) The petitioner shall appear before the investigating officer on all Mondays between 9 am and 10 am till final report is filed.

(vi) The petitioner shall not intimidate or influence the witnesses or middle with the investigation in any manner.

(vii) The petitioner shall not involve in any fresh crime of similar nature during the bail period.

If any of the conditions are breached by the petitioners, then the lower court concern is free to cancel the bail without referring the matter to this Court.

With the above direction and observation the petition is allowed.

Sd/-

K.RAMAKRISHNAN, JUDGE

SKV