

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.7931 of 2015 ()

(CRIME NO. NOT KNOWN OF ARANMULA POLICE STATION,
PATHANAMTHITTA DISTRICT ON COMPLAINT OF JOHN JOSEPH)

PETITIONER(S)/ACCUSED:

BIJU MATHEW ABRAHAM, AGED 39 YEARS,
S/O.MATHEW ABRAHAM, NANA VEETIL,
PUTHEN PARAMBIL VEEDU, KOZHENCHERY.

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

RESPONDENT(S)/STATE:

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

BY PUBLIC PROSECUTOR SRI.C.RASHEED

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

K. RAMAKRISHNAN, J.

Bail Application No.7931 of 2015

Dated this the 22nd day of December, 2015

ORDER

This is an application filed by the petitioner anticipating arrest on the basis of a complaint given by one John Joseph, alleging non bailable offence under Section 438 of the Code of Criminal Procedure (hereinafter called the Code).

2. It is alleged in the petition that on the basis of the complaint given by one John Joseph, a crime was registered by Aranmula police, alleging offence under Section 420 of the Indian Penal Code and he is likely to be arrested in connection with that crime. On the basis of the private complaint filed by one Jikky John, which was forwarded to the police and a crime was registered as Crime No.1433/2015 of Aranmula police station, alleging offence under Section 406 and 420 of the Indian Penal

Code and other offences. Now understood that one John Joseph also filed a complaint and on the basis of which a crime was registered, the particulars of which were not known to the petitioner and he apprehends arrest in that case as well. So he prayed for allowing the application.

3. The counsel for the petitioner in support of his case also submitted that, in respect of some transaction between the petitioner and the said John Joseph, the matter was referred to Lok Adalat, in the suit filed by the petitioner against John Joseph as O.S.No.228/2012 of IInd Additional Sub Court, Ernakulam, was settled in the Adalat dated 16.03.2012, wherein he had agreed to pay the amount and on the basis of the agreement entered into between the parties, which he now claims to be a false document and when the execution petition was filed, the said John Joseph and others challenged the award before this court by filing O.P.(Civil) No.1763/2015 and that was dismissed by this court by Annexure-A2 order. So there is no bona fides in

filing the complaint.

4. On the other hand, learned Public Prosecutor Sri. C.Rasheed submitted that, on the basis of the complaint received from John Joseph Crime No.1766/2015 of Koipuram police station was registered, alleging offence under Section 470, 468, 465 and 471 of the Indian Penal Code and investigation is still in progress.

5. It is seen from the report of the investigating officer that a crime was registered on the basis of a complaint given by the defacto-complainant alleging that on 08.10.2010, the defacto-complainant borrowed a sum of ₹75,00,000/- from the petitioner and as a security for the same, several blank signed papers and stamp papers were obtained from the defacto-complainant, his wife and children and misusing one of the stamp papers, he had created a document alleging that an amount of ₹2,75,00,000/- was due from the defacto-complainant to the petitioner and according to him it is a false document and

these documents were created after summoning him to a flat in Ernakulam and by coercion. But it will be seen from the documents produced by the petitioner that the petitioner had filed O.S.No.228/2012 of Sub Court, Ernakulam, for realisation of certain amount for ₹4,30,00,000/- from the defacto-complainant, wife and children and that was referred to Lok Adalat and as per Annexure-A1 an award was passed, agreeing to pay an amount of ₹2,75,00,000/- with some conditions. When this was put in for execution as C.P.No.219/2012, the said John Joseph, his wife and children objected the same and also moved this court by filing O.P.(Civil) No.1763/2015 and that was dismissed by this court by Annexure-A2 order. However I am not going to these aspects while considering this application as it is a matter to be considered by the investigating agency as to whether the an offence has been committed or not and whether he will have to be proceeded with for committing the criminal offence or not.

Considering these aspects, this court feels that, anticipatory bail can be granted to the petitioner with some conditions, especially when he was granted regular bail by this court in a similar crime registered against him in Crime No.1433/2015 of Aranmula police station as per B.A.No.7034/2015. So considering these aspects, this court feels that, anticipatory bail can be granted to the petitioner with some stringent conditions. So the application is allowed with following conditions:

The petitioner shall surrender before the investigating officer in Crime No.1766/2015 of Koipuram police station, registered on the basis of the complaint given by one John Joseph within ten days from today and on his surrender, on interrogation, if the investigating officer requires the arrest of the petitioner, then after recording his arrest, produce him before the concerned magistrate court without delay as far as possible on the same day itself before 5.00 p.m., and on such production, the accused

making an application for bail and the magistrate is directed to release the petitioner on bail on executing the following conditions:

(i) The petitioner shall execute a bond for ₹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 9.00 a.m., and 10.00 a.m., till the final report is filed.

(vi) The petitioner shall not intimidate or

influence the witnesses or meddle 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

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P.A. to Judge

SS