

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Bail Appl.No. 9091 of 2014

CRIME NO. 3744/2014 OF KODUNGALLUR POLICE STATION, THRISSUR
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PETITIONER(S)/ACCUSED:

- 1. RAJESH A.R., AGED 43 YEARS,
S/O.RAMAN, ARIKKANEZHATH HOUSE, MAY IST ROAD,
AKG NAGAR , THAMMANAM, KOCHI-32,
ERNAKULAM DISTRICT.**
- 2. LIGIN, AGED 24 YEARS,
S/O.K.S.LENIN, KOLLAMSSERIL HOUSE, EZHUPUNNA,
CHERTHALA, ALAPPUZHA DISTRICT.**

BY ADV. SRI.RAJIT

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA , ERNAKULAM.**
- * ADDITIONAL R2 IMPEADED**
- 2. KIRANKUMAR, AGED 25 YEARS,
S/O.RAJAN, PULIKKAL HOUSE,
NORTH SIDE OF EDAVILANGU,
GOVERNMENT SCHOOL, EDAVILANGU VILLAGE,
KODUNGALLUR TALUK, THRISSUR DISTRICT, KERALA.**
- * ADDITIONAL R2 IS IMPEADED AS PER ORDER DTD.6.1.2015 IN
CRL.MA.28/2015 IN BA.9091/2015.**

**R1 BY PUBLIC PROSECUTOR SMT.LISHA M.G.
R2 BY ADVS. SRI.P.M.ABDUL JALEEL (KODUNGALLUR)
SRI.V.A.AJMAL
SRI.T.V.SHAJI**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
09-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

SUNIL THOMAS, J.

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B.A.No.9091 of 2014

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Dated this the 9th day of July, 2015

ORDER

Petitioners are accused Nos.2 and 3 in Crime No.3744 of 2014 of the Kodungalloor Police Station for offences punishable under Sections 420, 465, 120B and Sections 18 and 19 of the Transplantation of Human Organs and Tissues Act, 1994.

2. The de facto complainant in his private complaint filed before the local magistrate court alleged that while he was in search of a Visa to go abroad in search of job, was introduced by accused Nos.1 to 4 to accused No.5, who in turn took him to Chennai. He allegedly paid Rs.1,00,000/- for obtaining Visa. Thereafter, he was taken to Srilanka by flight. He was made to stay in hospital for several days and had undergone certain procedures. According to him, thereafter he realised that he had undergone a surgery, and one of his kidneys was removed. Thereafter, he returned to India on 18.09.2013. Alleging that he was trapped by a gang of human organ traffickers, he filed the above complaint on 09.12.2014. Investigation has progressed. Apprehending arrest, accused Nos.2 and 3 have approached this

Court seeking pre-arrest bail.

3. Heard both sides including the de facto complainant. Examined the records.

3. The definite allegation in the complaint is that he was in search of Visa and accused Nos.1 to 4 led him to accused Nos.5 and 6. The exact role played by each of accused Nos.1 to 4 is not specifically narrated in paragraph 1 to 7 of the private complaint. However, it is alleged that they were also parties to the alleged racket dealing in human organs.

4. The definite stand taken by accused Nos.2 and 3 is that the second accused who himself is the donor of a kidney, was met by the de facto complainant with the intention of donating his kidney. He had only instructed him to meet accused No.4. However, it appears that accused Nos.4, 5 and 6 are also not identified specifically and their whereabouts and addresses are also not available on record. Evidently, atleast the identity of accused No.4 can only be known by interrogation of accused Nos.2 and 3. It is also seen from records that the de facto complainant is in possession of records relating to the procedures undergone by him in Srilanka. Learned counsel for the applicants contended

that after having voluntarily donated his organs and received the consideration, the de facto complainant is trying to blackmail them. It was contended that the de facto complainant could have filed complaint earlier especially because he knew atleast immediately after he left Srilanka, that he had undergone a surgery and lost kidney. However, the complaint was submitted long thereafter, after about an year. The delay is explained by the de facto complainant on the ground that he was afraid of the "human organ transplant racket". Without going into the merits of the case, it is to be held that even the transplantation does not appear to be in accordance with the procedure laid down in India and hence the investigation has to progress further to identify whether any racket is involved or whether, it was only an individual transplantation of human organ voluntarily done by the de facto complainant with the help or aid of the remaining accused. Hence, if anticipatory bail is granted to the applicants herein, investigating agency may find it difficult to ensure the identity of accused Nos.4 to 6 and proceed further.

5. Learned counsel for the applicants relied on Section 22 of the Transplantation of Human Organs and Tissues Act, to

contend that the Court cannot take cognizance of the offence alleged, otherwise than in accordance with the procedure contemplated therein. It is for the investigating agency to look into and to do the needful.

In the above circumstances, I feel that granting of anticipatory bail at this stage of investigation, especially when it involves certain acts having taken place outside kerala and some other part even abroad, it may not be proper to grant anticipatory bail to the applicants. It is for the investigating agency to decide whether custodial interrogation of accused Nos.2 and 3 are required at all.

The application is hence dismissed.

Sd/-

SUNIL THOMAS
Judge

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