IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2020 / 1ST ASWINA, 1942

Bail Appl..No.5326 OF 2020

CRIME NO.113/2019 OF Binanipuram Police Station , Ernakulam

PETITIONER/S:

RAHUL R
AGED 25 YEARS
SON OF RADHAKRISHNAN,
SANKARAN KANDATH HOUSE,
KOPPAM P.O, PALAKKAD DISTRICT
678001

BY ADV. SRI.NIREESH MATHEW

RESPONDENT/S:

1 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA
682031

2 **ADDL.R2 DINOOP LALU**
AGED 30 YEARS
S/O LALU,
MANKUDIYIL HOUSE,
NEAR GOVT.SCHOOL,
MANNATHOOR,
THIRUMARADI,BINANIPURAM,
ERNAKULAM,
PIN- 686662
IS IMPLEADED AS PER THE ORDER DATED 11.9.2020 IN CRL.M.A.NO.1/2020.

R1 BY PUBLIC PROSECUTOR

OTHER PRESENT:

SRI.SANTHOSH PETER SR PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23.09.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

O R D E R

Dated this the 23rd day of September 2020

Application for anticipatory bail under Section 438 of Cr.P.C.

Applicant is the 3rd accused in Crime No.113 of 2019 of Binanipuram Police Station for having allegedly committed offences punishable under Sections 406 and 420 r/w Section 34 of IPC.

2. The prosecution case in brief is that accused 1 and 2 had dishonestly induced several persons to deliver 75 cars and thereafter instead of returning it to the owners, cheated them by either subletting or selling those cars to several persons and some of the cars were also sold without the concurrence or knowledge of the actual owners of the cars. It is alleged that the applicant also had received a Toyota Innova Car bearing registration No. KL 71/D-7830 on sublease from accused 1 and 2. It is stated that the applicant has thus in furtherance of common intention with accused 1 and 2 committed the offence.

3. The applicant had earlier approached the Sessions

Court, Ernakulam for anticipatory bail by filing Crl.M.C. No.1582/2019. On the submissions made by the learned Public Prosecutor, that the applicant has not been made an accused, the learned Sessions Judge vide order at Annexure I, disposed the application stating that in case the applicant is to be proceeded against, notice under Section 41 A Cr.P.C. shall be served upon him. Accordingly, the applicant states that he had received a notice under Section 41 A of Cr.P.C. and he also co-operated with the investigation. He is not in possession of any car either by way of lease or by way of sale and that there is absolutely no material to indicate that he was handed over any car by accused 1 and 2. However, since he has been made an accused, he anticipates arrest and has therefore approached this Court for anticipatory bail.

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

5. On going through the entire facts and circumstances of this case, I find that there is absolutely no material to show that the applicant had received any car from accused 1 and 2 either by way of sub lease or by way of sale. In case it is a sale, or even if it is a lease, there would definitely be some

documents pertaining to the same. I find that there is absence of materials indicating the complicity of the applicant in the crime. There is also an admission that he has appeared in consequence to the notice served on him under Section 41A of Cr.P.C. However, custodial interrogation of the applicant does not appear to be necessary under the given circumstances. Therefore, the applicant is entitled to anticipatory bail.

In the result, the application is allowed and the applicant is directed to surrender before the investigating officer, within two weeks and cooperate with the investigation. In the event of his being arrested, he shall be released on bail on execution of a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties, each for the like amount to the satisfaction of the investigating officer and on following conditions:

(i) He shall appear before the investigating officer as and when called for,

(ii) He shall not attempt to influence the witnesses or tamper with evidence.

(iii) He shall not get involved in any other similar crimes during the currency of the bail.

In case of violation of any bail condition, the prosecution is at liberty to apply for cancellation of the bail before the jurisdictional court.

SD/-
ASHOK MENON

JUDGE

rmm