IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946

BAIL APPL. NO. 1788 OF 2024

CRIME NO.1295/2023 OF ARYANCODE POLICE STATION, THIRUVANANTHAPURAM

PETITIONER/ACCUSED:

GEORGE JOSEPH,
AGED 71 YEARS
S/O. ROBERT JOSEPH, R.S.HOUSE, VAZHUTHOOR, NEYYATTINKARA, THIRUVANATHAPURAM DISTRICT, PIN - 695125

BY ADVS.
C.H.ABDUL RASAC
K.R.AVINASH (KUNNATH)

RESPONDENTS:

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

2 **V.J.WILFREDSON,**
S/O VEDANAYAKAM, NEVIL DELE, MURUTHAMKODE VEEDU, MANNAMKONAM.P.O, CHEMPOORU DESOM,KEEZHAROOR VILLAGE, NEYYATTINKARA TALUK IS IMPLEADED AS ADDL R2 AS PER ORDER DATED 4/7/24 IN CRL MA 2/24

BY ADVS.
No Advocate
GEORGE ABRAHAM
MARY CATHERINE PRIYANKA P.S.
EBEE ANTONY
SR.PUBLIC PROSECUTOR SRI. C.S HRITHWIK

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 24th day of July, 2024

O R D E R

The application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('Code', for short), for an order of pre-arrest bail.

2. The petitioner is the accused in Crime No.1295/2023 of the Aryancode Police Station, Thiruvananthapuram, which is registered against the accused for allegedly committing the offences punishable under Sections 419, 420, 465, 467, 468, 469 and 471 of the Indian Penal Code (in short, IPC).

3. The crux case of the prosecution is that: the accused, with an intention to cause loss and defame to the de facto complainant, forged the letter head of the Jnanodayam L.P. School, Mannamkonam, Thiruvananthapuram, wherein the father of the de

facto complainant was the Manager and he submitted a false application before the Tahsildar, Kattakada, stating that he is R.George Joseph, Manager of the school and also submitted a complaint before the Investigating Officer using forged letter head of the school. Thus, the accused has committed the above offences.

4. Heard; Sri.Abdul Rasac, the learned counsel appearing for the petitioner, Sri.C.S.Hrithwik., the learned Senior Public Prosecutor and Dr..George Abraham, the learned counsel appearing for the second respondent.

5. The learned counsel appearing for the petitioner submitted that the petitioner is innocent of the accusations levelled against him. The Investigating Officer has deliberately registered the crime at the influence of the second respondent. Disputes between the parties are subjudice before the Civil Court. The

petitioner is the Manager of the school in a property owned by his wife and son. The petitioner is a law abiding citizen and has no criminal antecedents. The petitioner is aged 71 years. He is ready to abide by any stringent conditions that may be imposed by this Court. Hence, the application may be allowed.

6. The learned Public Prosecutor opposed the application. He submitted that there are incriminating materials to substantiate the petitioner has forged documents and committed the offences alleged against him. The petitioner’s custodial interrogation is necessary for the proper and full investigation of the crime. If the petitioner is granted an order of pre-arrest bail, it would certainly torpedo the entire investigation. Hence, the application may be dismissed.

7. The second respondent has filed a counter affidavit denying the assertions in the bail application. The second respondent has contended that his father

had submitted an application before the educational authorities to close down the school. Accordingly, the school was closed down on 25.4.2006. A copy of the communication dated 13.12.2023 issued by the Assistant Educational Officer is produced as Annexure R2(c). The property of the school belongs to the second respondent and his brothers. They are paying land tax and building tax for the school as evidenced by Annexure R2(f). Even though the petitioner has approached this Court to quash the instant FIR, the same was dismissed by Annexure R2(g) judgment on finding that there are prima facie materials against the petitioner. The petitioner has committed a heinous offence by forging the letter head of the school and claiming to be the Manager. If the petitioner is granted an order of pre-arrest bail, it would certainly hamper the investigation. Hence, the application may be dismissed.

8. The prosecution case is that, the petitioner has forged documents and claimed to be the Manager of a closed down school. The petitioner also made a similar complaint to the Tahsildar as well as the Investigating Officer.

9. When the application came up for consideration on 17.5.2024, this Court had directed the petitioner to produce the documents to substantiate that he is the Manager of the school. However, no document is forthcoming. Therefore, it is only to be inferred that the petitioner is not the Manager of the school as claimed by him.

10. In ***Srikant Upadhyay v. State of Bihar*** [2024 KHC OnLine 6137] the Honourable Supreme Court, after referring to all the earlier decisions on the point, has observed in the following lines:

> "8. It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent

view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under S.438, CrPC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in HDFC Bank Ltd. v. J.J.Mannan & Anr., 2010 (1) SCC 679).

xxx xxx xxx

24.We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. xxx xxx"

11. In ***Jai Prakash Singh v. State of Bihar and another*** [(2012) 4 SCC 379], the Hon'ble Supreme

Court has held that, an order of pre-arrest bail being an extra ordinary privilege, should be granted only in exceptional cases. The judicial discretion conferred upon the Courts has to be properly exercised, after proper application of mind, to decide whether it is a fit case to grant an order of pre-arrest bail. The court has to be prima facie satisfied that the applicant has been falsely enroped in the crime and his liberty is being misused.

12. On an overall consideration of the facts, the rival submissions made across the Bar, and the materials placed on record, especially on comprehending the nature, seriousness and gravity of the accusations levelled against the petitioner, that there are prima facie materials to substantiate the petitioner's involvement in the crime, the petitioner's custodial interrogation is necessary and recovery is to be effected, I am not satisfied that the petitioner has

made out any valid ground to invoke the discretionary jurisdiction of this Court under Section 438 of the Code. Hence, I hold that this is not a fit case to grant an order of pre-arrest bail.

Resultantly the bail application is dismissed.

SD/-
C.S.DIAS,JUDGE

rmm/24/7/2024