IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 18TH DAY OF JANUARY 2024 / 28TH POUSHA, 1945

BAIL APPL. NO. 10828 OF 2023

CRIME NO.943/2023 OF RANNI POLICE STATION, PATHANAMTHITTA

PETITIONER/ACCUSED 3:

SARATH S.
AGED 33 YEARS
SARATH S., AGED 33 YEARS,
S/O SAHADEVAN, VILAYIL VEEDU,
NEDUMONKAVU P.O, KOODAL VILLAGE,
PATHANAMTHITTA, PIN - 695509

BY ADV MANAS P HAMEED

RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE STATION HOUSE OFFICEF,
RANNI POLICE STATION
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

BYSR PP SRI C S HRITHWIK

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O R D E R

Dated this the 18th day of January, 2024

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 3rd accused in Crime No.943/2023 of the Ranni Police Station, Pathanamthitta, registered against the accused (three in number) for allegedly committing the offences punishable under Sections 420, 406, 465 and 468 r/w 34 of the Indian Penal Code, 1860, *('IPC', for short).*

3. The gist of the prosecution case is that: the accused 1 and 2 promised employment for the defacto complainant's daughter as an accountant in the Kerala Infrastructure Investment Fund Board (KIFB)on paying them an amount of Rs. 10 lakh. Accordingly, the defacto complainant transferred a sum of Rs. 8.5 lakh

to the accused 1 and 2 and the 3rd accused issued the appointment order. However, when the defacto complainant's daughter went to join the above board, they learnt that they were cheated. Thus, the accused have committed the above offences.

4. Heard; Sri. Manas P. Hameed, the learned counsel appearing for the petitioner and Sri. C.S, Hrithwik., the learned Senior Public Prosecutor appearing for the respondent.

5. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. There is no specific overt act alleged against him. The petitioner is a law abiding citizen. The petitioner is willing to abide by any condition that may be imposed by this Court. Hence, an order of pre-arrest bail may be passed.

6. The learned Public Prosecutor opposed the application. He submitted that it was the petitioner

who fabricated the appointment letter of the above Board. The petitioner's custodial interrogation is necessary for the proper and fair investigation of the case. Hence, the application may be dismissed.

7. In **Siddharam Satlingappa Mhetre v. State of Maharashtra** [(2011) 1 SCC 694] the Hon'ble Supreme Court has held as follows:

> **111.** No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail: (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation

> and there should be prevention of harassment, humiliation and unjustified detention of the accused;
>
> (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
>
> (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.
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> **126**. We deem it appropriate to reiterate and assert that discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

8. Likewise, in **Gurbaksh Singh Sibbia v. State of Punjab,** (1980) 2 SCC 565] the Hon’ble Supreme Court has held as follows:

> **21**. The High Court says in its fourth proposition that in addition to the limitations mentioned in

> Section 437, the petitioner must make out a "special case" for the exercise of the power to grant anticipatory bail. This, virtually, reduces the salutary power conferred by Section 438 to a dead letter. In its anxiety, otherwise just, to show that the power conferred by Section 438 is not "unguided or uncanalised", the High Court has subjected that power to a restraint which will have the effect of making the power utterly unguided. To say that the applicant must make out a "special case" for the exercise of the power to grant anticipatory bail is really to say nothing. The applicant has undoubtedly to make out a case for the grant of anticipatory bail. But one cannot go further and say that he must make out a "special case". We do not see why the provisions of Section 438 should be suspected as containing something volatile or incendiary, which needs to be handled with the greatest care and caution imaginable. A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail.

9. On an anxious consideration of the materials placed on record, particularly taking note of the nature, gravity, and seriousness of the offence alleged

against the petitioner, who is said to have criminal antecedents, that petitioner's custodial interrogation is necessary and that the investigation is only at a nascent stage, I am of the definite view that the petitioner is not entitled to invoke the extra ordinary jurisdiction of this Court under Sec.438 of the Code. Therefore, I am of the view that this is not a fit case to grant an order of pre-arrest bail. Consequently, the bail application is dismissed.

10. Nonetheless, I direct that, if the petitioner surrenders before the Investigating Officer within 10 days from today, he shall be interrogated and, thereafter, be produced before the jurisdictional Court on the date of surrender itself. Then, if the petitioner moves an application for bail, the jurisdictional Court shall, untrammelled by any observations in this order, consider the bail application on its merits and as expeditiously as possible. If the petitioner does not

surrender before the Investigating Officer as directed above, the Investigating Officer shall be free to arrest the petitioner as if no order has been passed in this case.

Sd/-

C.S.DIAS,JUDGE

mtk/18.01.24