IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 22ND DAY OF JULY 2024 / 31ST ASHADHA, 1946

BAIL APPL. NO. 4367 OF 2024

CRIME NO.752/2024 OF TIRUR POLICE STATION, MALAPPURAM

PETITIONER/ACCUSED:

SHABEER,
AGED 40 YEARS
SON OF AHAMMED HAJI, CHERUPARAMBIL HOUSE, THIRUNAVAYA P.O., MALAPPURAM DISTRICT, PIN - 676301

BY ADVS.
SRI.P.M.ZIRAJ
SRI.IRFAN ZIRAJ

RESPONDENTS/COMPLAINANT:

1. **STATE OF KERALA,**
   REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031
2. **THE SUB INSPECTOR OF POLICE,**
   TIRUR POLICE STATION, MALAPPURAM DISTRICT, PIN - 676101

BY SMT NIMA JACOB, PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.S.DIAS,J

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Bail Application No. 4367 of 2024

Dated this the 22nd 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 sole accused in Crime No. 752/2024 of the Tirur Police Station, Malappuram, which is registered against him, for allegedly committing the offences punishable under Section 379 of the Indian Penal Code, 1860 and Sections 20 and 23 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (for short 'the Act').

3. The concise case of the prosecution is that; on 18.05.2024, at around 13.00 hours, the 2nd respondent got

reliable information that the accused was removing river sand. In the search that was conducted, 50 sacks of river sand were seized from the conscious possession of the accused. Thus, the accused has committed the above offences.

4. Heard; Sri.P.M Ziraj, the learned counsel appearing for the petitioner and Smt.Nima Jacob, the learned Public Prosecutor.

5. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. As per Annexures-A2 and A3 orders, this Court has categorically held that the offence under Section 379 IPC will not be attracted in cases of a similar nature. The petitioner's custodial interrogation is not necessary and no recovery is to be effected. Hence, the application may be allowed.

6. The learned Public Prosecutor seriously opposed the application. She submitted that the petitioner is a person with criminal antecedents, since he is involved in 50

crimes of a similar nature registered by the very same Police Station. If the petitioner is granted an order of pre-arrest bail, the petitioner would commit a similar offence. Moreover, the petitioner's custodial interrogation is necessary. Hence, the application may be dismissed.

7. The allegation against the petitioner is that, he committed theft of river sand in violation of the provisions of the Act. Indisputably, the petitioner is an accused in 50 other crimes registered by the very same Police Station as evidenced from the bail objection report filed by the Investigating Officer.

8. Section 438 (i) of the Code specifically contemplates that the Courts while considering an application for pre-arrest bail shall look into the antecedents of the applicant.

9. In the case on hand, the petitioner is an accused in 50 other crimes spanning from 2006-2024.

10. In **Srikant Upadhyay v. State of Bihar** [2024 KHC OnLine 6137], the Hon'ble Supreme Court, after

referring to the earlier precedents on the point, has succinctly laid down the law 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)."

> "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 xxx 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. After bestowing my anxious consideration to the facts, the rival submissions made across the Bar, and the materials placed on record, particularly on considering the criminal antecedents of the petitioner, and that the petitioner's custodial interrogation is necessary, I am not satisfied that the petitioner is entitled to an order of pre-arrest bail.

In the result, the application is dismissed.

Nonetheless, I direct that, if the petitioner surrenders before the Investigating Officer within one week 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, consider the bail application on its merits. 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

NAB