IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946

BAIL APPL. NO. 5342 OF 2024

CRIME NO.1011/2024 OF FORT POLICE STATION, THIRUVANANTHAPURAM

PETITIONER/ACCUSED:

1 RAMESH D S,
AGED 52 YEARS
S/O DAMODHARAN NAIR, CHALA, CLERK VYAPARISHEMA BOARD,
CHALA, THIRUVANANTHAPURAM CITY, KERALA, PIN - 695001

BY ADVS.
SREEJITH S. NAIR
V.S.THOSHIN
SATHEESH MOHANAN
MAHIMA
AKHIL SUSEENDRAN
SEKHAR G. THAMPI

RESPONDENT/COMPLAINANT

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

BY ADVS.
SMT.REKHA S., SR.PP
SRI.A.RAJESH, SPL.PP (VIGILANCE)

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.JAYACHANDRAN, J.

B.A. No.5342 of 2024

Dated this the 31st day of May, 2024

ORDER

Petitioner, the sole accused (as of now) in the crime, bearing F.I.R. No.1011/2024 of Fort Police Station, Thiruvananthapuram seeks pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973.

2. Heard Sri.Sasthamangalam S.Ajith Kumar, the learned Senior Counsel, duly instructed by Adv.Sri.Sreejith S. Nair, on behalf of the petitioner and Smt.Rekha S., learned Senior Public Prosecutor, on behalf of the respondent State.

3. Learned Senior Counsel for the petitioner submits that the petitioner was appointed as an Assistant in the Vyapari Kshema Nidhi Board, Chala and

he was officiating as the cashier there, dehors any specific appointment or authorisation to that effect. In the audit which took place, certain anomalies were detected, pursuant to which, the C.E.O. of the Board preferred a complaint before the S.H.O., Fort Police Station, Thiruvananthapuram. Accordingly, Annexure-A F.I.R. was registered for offences under Sections 167, 406, 420, 464 and 471 of the I.P.C. According to the learned Senior, steps have already been initiated to incorporate the offences under the Prevention of Corruption Act as well. Learned Senior would submit that the petitioner will fully cooperate with the investigation and that his custodial interrogation, as such, is not required in the given facts. The petitioner is prepared to provide his handwriting to the investigating team and he is also prepared to explain the short remittance, which was found in the audit. Learned Senior Counsel would submit that, going by the nature of the allegations leveled, the evidence to be adduced is

substantially documentary in nature, which also negates the necessity for custodial interrogation. Learned Senior Counsel would submit that the petitioner is prepared to report before the police periodically as instructed by this Court, on which premise, the instant application for pre-arrest bail is sought to be allowed.

5. This application was seriously opposed by the learned Senior Public Prosecutor, who would submit that the custodial interrogation of the petitioner is quite necessary. Learned Senior Public Prosecutor would submit that few of the receipts are yet to be traced. It was then submitted that, by virtue of a subsequent statement, the quantum of amount misappropriated is Rs.14,36,156/-, as against Rs.6,55,050/- indicated in Annexure-A F.I.R.

6. The prosecution case in brief is as follows:

The petitioner was working as the clerk cum cashier in the Vyapari Kshema Nidhi Board, Chala. While so, the amount which came as the remittance towards the

profit due to the members of the Board on 31.05.2024 was Rs.2,73,500/-, out of which, Rs.73,500/- alone was remitted in the treasury and the balance was misappropriated and siphoned off by the petitioner. Similarly, on 07.06.2024, the amount due for remittance was Rs.71,710/-, out of which Rs.1,710/- alone was remitted to the treasury. Likewise, on 12.06.2024, the amount due for remittance was Rs.1,90,935/-, of which Rs.90,935/- alone was remitted and the balance amount misappropriated. Accordingly, as per Annexure-A F.I.R., a total sum of Rs.6,55,050/- has been misappropriated and taken away by the petitioner, thus, committing the offences enumerated above. It is the said quantum, which has now been enhanced to Rs.14,35,156/-, as per the new statement given by the de facto complainant, who is the C.E.O. of the Board.

7. Having referred to the prosecution allegations, this Court is not in a position to endorse the

submissions made by the learned Senior Counsel to the effect that the custodial interrogation of the petitioner is not required in the given facts. It is not disputed as of now that the petitioner was officiating as the clerk cum cashier of the Welfare Board at the relevant time. The allegation is to the effect that out of the amounts which were due for remittance, substantial amounts were not remitted and were misappropriated and siphoned off. In order to unearth the mode and manner in which the amounts have been misappropriated, this Court is of the opinion that custodial interrogation of the petitioner may be required. That apart, going by the gravity of the offences alleged, especially taking into account the offences which are sought to be canvassed under the Prevention of Corruption Act, this Court is of the opinion that the somewhat extraordinary remedy under Section 438, Cr.P.C. cannot be invoked in favour of the petitioner.

In the circumstances, the application for pre-arrest bail would stand dismissed. Based on the request made by the learned Senior Counsel for the petitioner, the petitioner is granted one weeks' time to surrender before the investigating officer. In case, he prefers any application for regular bail, the same will be considered by the Special Court expeditiously, in accordance with law.

Sd/-

C. JAYACHANDRAN

JUDGE

SKP/31-07

APPENDIX OF BAIL APPL. 5342/2024

PETITIONER'S ANNEXURES:

ANNEXURE A	THE TRUE COPY OF THE FIR IN CRIME NO. 1011/2024 OF FORT POLICE STATION THIRUVANANTHAPURAM DISTRICT

RESPONDENT'S ANNEXURES:NIL

TRUE COPY

P.A. TO JUDGE