

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 11TH DAY OF MAY, 2020 / 21ST VAISAKHA, 1942

B.A.No. 1915 /2020

(Crime No. Not Known Elamakara Police Station)

PETITIONERS:

Mr. Mahesh Murali aged 29 years
S/o. R.Murali Residing at, Getticombi Village,
Gudada Post, Kotagiri, Nilgiris 641 002

BY ADVS.

SRI.T.B.SHAJIMON

SMT.GOVINDU P RENUKA DEVI

vs/-

RESPONDENT:

STATE OF KERALA

REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM. 682031

SRI. AJITH MURALI, PP
SRI. SANTHOSH PETER SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A.No.1915 of 2020

Dated this the 11th day of May, 2020

O R D E R

This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the 1st accused in Crime No.84 of 2020 of Elamakara Police Station registered against the petitioner alleging offence punishable under Section 420 of the Indian Penal Code.

3.The prosecution case is that the petitioner and the other accused had committed misappropriation and cheating. According to the prosecution, when the audit was conducted, the petitioner and other accused misappropriated an amount of Rs.5.5 lakhs during the period from 01.02.2018 to 31.01.2020.

4. The counsel for the petitioner submitted that, he has not committed any offence. The police is coming to his house and searched. He is not aware about the case and that is why,

no crime number is mentioned in the bail application. He was on a bona fide believe that, the case against him is an offence under Section 138 of the Negotiable Instruments Act, in which he already sent a reply notice to the complainant in that case.

5.The learned Public Prosecutor opposed the bail application and submitted that, if this court granting bail to the petitioner, stringent conditions may be imposed.

6. I think the facts and circumstance of the case, bail can be granted to the petitioner. The prosecution case is that, when audit was conducted in the accounts at an optical shop in which the petitioner was in charge, it revealed that the petitioner misappropriated an amount of Rs.5.5 lakhs during the period from 01.02.2018 to 31.01.2020. Admittedly the offence is revealed after the audit. In such situation custodial interrogation may not be necessary. I think this bail application can be allowed.

7. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the Hon'ble Supreme Court in

Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition(C) No.1 of 2020) and a Full Bench of this Court in **W.P(C)No.9400 of 2020** issued various salutary directions for minimizing the number of inmates inside prisons.

8. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in **Chidambaram. P v Directorate of Enforcement (2019 (16) SCALE 870)**, after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

9. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The petitioner shall appear before the Investigating Officer within ten days from today and shall undergo interrogation.
2. After interrogation, if the Investigating Officer propose to arrest the petitioner, he

shall be released on bail on executing a bond for a sum of Rs.,.50,000/-(Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the officer concerned.

3. The petitioner shall appear before the Investigating Officer as and when required. The petitioner shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

4. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing in the wake of declared lock-down.

5. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE