

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 06TH DAY OF MAY 2020 / 16TH VAISAKHA, 1942

B.A.NO.2246 OF 2020

(Crime No. 67/2020 of Kaipamangalam police station)

Petitioner/Accused

Shafeek, Aged 40 Years,
S/o Abdul Majeed,
Tharupeedikayil house,
Lokamalleswaram Village,
Uzhuvanthukadavu desom,
Kodungallur Taluk, Thrissur.

BY ADVS.
SRI.T.B.SHAJIMON
SMT.GOVINDU P RENUKA DEVI

RESPONDENT:

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

BY P.P.SRI.AJITH MURALI & SANTHOSH PETER(SR)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 06.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

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

2. The petitioner is the first accused in Crime No.67 of 2020 of Kaipamangalam Police Station registered alleging offences punishable under Sections 415,417,420,465,468,470,471,506(i) r/w Section 34 of the Indian Penal Code.

3. The prosecution case is that the petitioner along with his wife with their common intention to cheat the de facto complainant and her family, received 92 sovereigns of gold ornaments and a Hundai Car from her and moreover, a loan of Rs.8,50,000/- was availed by them through the de facto complainant, and they forged document using her Aadhar Card and received Rs.3,50,000/- using cheque through her bank account.

Thus, according to the Prosecution, the accused misappropriated about Rs.50,00,000/- by cheating the de facto complainant.

4. The counsel for the petitioner submitted that even if the case of the de facto complainant is accepted, it is a clear case of money dispute which can be resolved only in a civil court. He further submitted that no offences as alleged are prima facie made out in this case.

5. The learned Public Prosecutor opposed the Bail Application saying that forgery is involved in this case and the custodial interrogation of the accused is necessary.

6. After hearing both sides, I think that this Bail Application can be allowed. The alleged incident happened in 2012 and the complaint was lodged in 2020. The learned counsel for the petitioner read out the complaint through video conference. After hearing the complaint, it can be seen that it is a clear case of money dispute which can be resolved only in a civil court. Of course, if there is

any criminal offence is made, the Investigating Officer can investigate the case and for that purpose the custodial interrogation of the petitioner is not necessary. Hence, 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 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 to law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

pkk