

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.S.DIAS

FRIDAY, THE 24TH DAY OF APRIL 2020 / 4TH VAISAKHA, 1942

B.A. No.2256 OF 2020

CRIME NO.83/2020 OF THRIKKAKKARA POLICE STATION, ERNAKULAM DISTRICT

PETITIONER/ACCUSED NO.7:

SHINTU MARTIN, AGED 29 YEARS,
W/O.NITHIN, NILAMPUATHUVIL HOUSE,
PATTUPURA NAGAR, KAKKANADU VILLAGE,
ERNAKULAM DISTRICT.

BY ADV. SRI.M.B.SANDEEP

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN-682 031.

SRI.AMJAD ALI, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING FINALLY HEARD ON 24.04.2020,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This is an application filed under Section 439 of the Code of Criminal Procedure.

2. The petitioner is the 7th accused in Crime No.83 of 2020 of the Thrikkakara Police Station. The petitioner with other accused in the crime are alleged to have committed the offences punishable under Sections 120B, 406, 409,420, 465, 468, 471 and 477A of the Indian Penal Code and Sections 65 and 43(i) read with Section 66, 66(C) and 66(D) of the Information Technology Act and Section 13(1)(a) of Prevention of Corruption Act, 1988.

3. The prosecution case, in brief, is that: The first accused in the above crime, who was working as as a Clerk in the Disaster Management Cell, Collectorate, Ernakulam entered into criminal conspiracy with accused Nos. 2 to 7 with intent to misappropriate money from the Chief Minister's Distress Relief Fund. In pursuance of the conspiracy, first accused transferred money from the Fund by using the username and password supplied to him by his superior. The first accused transferred various amounts from the Fund to the account of the second accused and the account of accused Nos. 3 to 7. Further, the accused transferred various amounts from the Fund to his own accounts in different banks. As of now, the accused has misappropriated an amount of Rs.27,73,000/- during the period from 29.1.2019 to 24.01.2020. The manipulation and misappropriation was done by making use of the failed transactions

which were conducted for transferring money to the genuine beneficiaries of the Distress Relief Fund. In the course of commission of the aforesaid acts, the accused committed forgery in the Digital records. The first accused abused his official position as public servant in doing the above acts. Other accused have also conspired with the first accused and have been beneficiaries of the amounts from the Fund. Thus, they have committed the above offences.

4. The petitioner was arrested on 4.3.2020. Her application for bail was dismissed by the Court of Enquiry Commissioner & Special Judge (Vigilance), Muvattupuzha by order dated 17.3.2020 in C.M.P. No.237 of 2020. The petitioner has been in custody for the last 51 days.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor via video-conferencing.

6. The learned counsel for the petitioner argued that the petitioner is absolutely innocent in the above crime. She has no knowledge of the offences alleged. According to her, the sole reason for arraying her as accused in the crime is an amount of Rs.2,50,000/- was credited to her bank account from the Treasury account. But it was her husband, who had forwarded her the Bank details of the second accused, his friend. Later, on the instructions of her husband, amounts were withdrawn from the bank account. She had filed a writ petition before this Court to preserve the CCTV footage of the bank, where the amounts was deposited. The said writ petition was allowed by this Court. She claims that she has an infant child to look after. Her husband, the 6th accused is

also in judicial custody. There is no one to look after the affairs of the child. Hence she prays that she may be released on bail especially, considering the fact that she is a woman and 51 days have also elapsed and investigation as against her is practically completed.

7. The learned Public Prosecutor, on instructions, submitted that the offences that have been alleged against the petitioner and other accused are very grave and very heinous one. Large scale misappropriation has been conducted by the accused. Investigation in the case is in progress. The Investigating Officer has filed a statement as directed by this Court. The details of the complicity of the crime is clearly mentioned in the statement. Therefore bail application may be dismissed.

8. The Hon'ble Supreme Court in ***Sanjay Chandra v. CBI*** [2012 (1) SCC 40] held as follows:

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution".

9. Recently, the Honourable Supreme Court in ***Nikesh Tarachand Shah v. Union of India*** [2018 (11) SCC 1] after going back to the days of the Magna Carta and after referring to *Gurbaksh Singh Sibbia v. State of Punjab* [(1980) 2 SCC 565] has reiterated the same view in ***Sanjay Chandra v. CBI (supra)***. Again, in ***P.Chidamabram v. Directorate of Enforcement*** [(2019) SCC Online SC 1549] the above proposition has

been fortified.

10. After the outbreak of the Novel Corona Virus (COVID -19) pandemic in the country, the Hon'ble Supreme Court in In Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition (C) No.1 of 2020) observed that the issue of overcrowding of prisons is a matter of serious concern. The State Governments were directed to take adequate measures to de-congest the prisons. Following the above direction, the Home Department, Government of Kerala has promulgated order dated 25.03.2020, *inter alia*, directing the release of under-trial prisoners alleged to have committed offences punishable with punishment for seven years or less. Later, a Full Bench of this Court by order dated 25.03.2020 in W.P.(C) No.9400 of 2020 (Suo Motu), has issued directions to de-congest the prisons in the State, keeping in mind the proposition that bail is the rule and jail is the exception.

11. Having regard to the facts and circumstances of the case, particularly the fact that that the petitioner is a woman and that the allegations levelled against her is that she was a beneficiary of an amount of Rs.2,50,000/- that was credited to her Bank account on the instructions of her husband and that the said amount was withdrawn by her husband itself; I feel that the petitioner can be granted bail especially because she is in detention for last 51 days and that her husband was the person who instructed that the amount be transferred to the Bank account. Likewise, as she has an infant child to look after and there is nobody else to look after the child, I am convinced that petitioner can be

granted bail. Moreover, the investigation as regards the petitioner is almost complete; and also in view of the legal proposition laid down by the Honourable Supreme Court in the afore cited decisions granting bail and also the directions of the Hon'ble Supreme Court and also Full Bench of this Court to decongest prisons in view of Covid-19 pandemic, I am inclined to allow this bail application.

12. In the result this bail application is allowed, on the following conditions:-

(i) Due to the present National lock-down and the

closure of Courts, the Jail Superintendent, where the petitioner is incarcerated, is directed to release the petitioner on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed sureties/immediate relatives. The petitioner shall also file an undertaking to the Jail Superintendent that he and his sureties will execute the bail bond before the jurisdictional Court within one week of its re-opening. The Jail Superintendent after ensuring the compliance of the above conditions, shall release the petitioner to the Station House Officer of the Police Station where the crime has been registered, who shall after noting down the above details, release the petitioner. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioner.

(ii) The petitioner shall within one week from the re-opening of the jurisdictional Court, if not already re-opened, execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioner shall appear before the Investigating Officer on all Saturdays between 10.00 a.m and 11 a.m till final report is filed.

(iv) The petitioner shall not tamper with the evidence or influence the witnesses in the case, in any manner, whatsoever.

(v) The petitioner shall not commit any offence while on bail.

(vi) The petitioner shall not leave the State of Kerala without the permission of the jurisdictional court.

(vii) Needless to mention that, if the petitioner violates any of the above conditions, the Station House Officer shall be at liberty to approach the jurisdictional Court and file appropriate application seeking for cancellation of the bail.

C.S.DIAS, JUDGE

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