

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 15TH DAY OF MAY 2020 / 25TH VAISAKHA, 1942

BA NO.2758 OF 2020

(Crime No. 613/2019 of Ottapalam Police Station, Palakkad District)

Petitioner/ Accused

Sunaleedharan.K,
Vadakkad House,
Thennilapuram(P.O), Alathur,
Palakkad – 678682

By Adv.Cimil C Kottalil, SRI.PHILIP T.VARGHESE

Respondents / Complainant

1. State of Kerala represented by the
Public Prosecutor, High Court of Kerala,
Ernakulam 682 031.
2. The Station House Officer, Ottapalam Police Station,
Palakkad, Pin : 691 101

By P.P. Sri.B.JAYASURYA (SR) & C.K.PRASAD

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
15.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.2758 of 2020

Dated this the 15th day of May, 2020

O R D E R

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is one of the accused in Crime No.613/2019 of Ottapalam Police Station registered alleging offences punishable under Sections 406, 420 and 506 of the Indian Penal Code, Sections 3 and 4 of Kerala Prevention of Money Laundering Act, 2002 and Sections 3, 4, 5 and 6 of Prize Chits and Money Circulation Scheme (Banning) Act, 1978. Petitioner was arrested on 5.3.2020 and he is in custody.

3. The prosecution case is that the petitioner was one of the directors of the company, managed by the 1st accused. It is alleged that the defacto complainant paid an amount of Rs.60,000/- to the 1st accused. The defacto complainant made payment hoping that he will be reimbursed the money along with 20% interest per month after ten months. Later he found that the 1st accused was cheating him

by not repaying the amount which was promised to him in connivance with the other accused. This is the admitted prosecution case.

4. The counsel for the petitioner submitted that, even if the entire allegations are accepted, it is only a civil dispute which is to be redressed in a civil court. No offence under Section 420 IPC is made out. He also submitted that, the offences under the other enactments are also not attracted in this case.

5. The learned Public Prosecutor submitted that, altogether 69 cases of similar nature registered against the petitioner and the other accused. If this Court is granting bail to the petitioner, stringent conditions may be imposed.

6. I considered the contentions of the learned counsel for the petitioner and the learned Public Prosecutor. I am not making any observation on the merit of the case. The admitted case of the prosecution is that, the defacto complainant paid certain amount to the accused company on assurance that the amount will be returned with interest after certain period. But the amount is not returned. Hence the criminal case is registered. It is a matter to be investigated by the investigating officer whether any criminal offence is made out in this case. I think, considering the facts and

circumstances of this case, 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 Superintendent of Jail concerned where the petitioner is incarcerated is directed to release the petitioner on bail on executing a self

bond ensuring that they will appear before the Court concerned as and when required, if he is not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioner as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone number and the address at which the petitioner would be residing after his release.

3. The Superintendent of Jail concerned, immediately after release of the petitioner will forthwith forward the bail bond obtained from the petitioner to the jurisdictional Court.

4. The petitioner immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish his phone number and the place where they are going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioner and shall ensure that the petitioner do not violate the terms of the undertaking.

5. 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.

6. The petitioner shall within one week from the commencement of the functioning of the jurisdictional court, if the court is not functioning at present, execute a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

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

8. The petitioner will surrender his passport, if any, before the investigating officer at the time of his surrender and if there is no passport, he will file an affidavit before the investigating officer.

9. The petitioner will not involve in similar offences.

10. 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**

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