

B.A TMP 173 OF 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 29TH DAY OF APRIL, 2020/9TH VAISAKHA, 1942

B.A TMP 173 OF 2020

**(CRIME NO. 87/2020 OF CHAKKARAKKAL POLICE STATION,
THALASSERY)**

Petitioner/ Accused No.1

Faisal P., S/o. Sajjad, aged 32,
residing at Fatima's House,
Thalakunda P.O., Kanhirode, Thalassery.

By Adv. Sri. Sasthamangalam S. Ajithkumar

Respondents/Complainants

1.State of Kerala represented by the Public
Prosecutor,
High Court of Kerala, Ernakulam-682031.

2.Sub Inspector of Police, Chakkarakkal Police
Station, Thalassery.

BY PUBLIC PROSECUTOR SRI.AJITH MURALI

THIS B.A HAVING COME UP FOR ADMISSION ON 29.04.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

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

2. The petitioner is the first accused in Crime No.87 of 2020 of the Chakkarakkal Police Station. The petitioner along with other accused are alleged to have committed the offences punishable under Sections 420 and Section 34 of the IPC.

3. The prosecution case, in brief, is that: From 4.1.2020, the petitioner and other accused, in furtherance of their common intention to deceive the Chakkarakkal Urban Co-operative Society, had pledged imitation gold and obtained loan for an amount of Rs.21,19,600/-. Thus, the petitioner and other accused have committed the above offence.

4. The petitioner was arrested on 26.2.2020. His application for bail was dismissed by the Sessions Court, Thalassery, by order dated 22.4.2020 in CrI. M.C No.76A of 2020.

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 of the accusations levelled against him. The other accused have already granted bail by the Sessions Court. Investigation in the case is practically complete. Petitioner is in custody for the last 63 days. No useful purpose will be served in the continued detention of the petitioner. Hence the petitioner may be enlarged on bail.

7. The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor argued that the petitioner is the kingpin of the crime. Petitioner has cheated the Co-operative society to the tune of Rs.21,19,600/- . Hence the petitioner may not be enlarged on bail.

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. On a cumulative assessment of the facts and circumstances of the case, particularly the fact that the petitioner is in custody for the last 63 days; that investigation in the case is practically completed; that other accused in the crime have already enlarged on bail; that the petitioner's continued detention is unnecessary; and in view of the directions of the Honourable Supreme Court in the afore cited decisions and the directions of the Hon'ble Supreme Court and Full Bench of this Court to de-congest 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.5,00,000/- (Rupees Five Lakh 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 Tuesdays and 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