

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 05TH DAY OF MAY 2020 / 15TH VAISAKHA, 1942

BA TMP NO.21 OF 2020

(CRIME NO. 83/2020 OF THRIKKAKARA POLICE STATION)

Petitioner / 1ST Accused

Vishnu Prasad , age 30 S/o Indhucoodan
Vaishnavam House, Mavelipuram
P.O, kakkamadu Village

BY ADV.SRI.PEEYUS.A

Respondent/ Complainant

State of Kerala represented by
Police Assistant Commissioner
District Crime Branch ,Kochi

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

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ALONG BA
TMP.NO.42 OF 2020 ON 05.05.2020, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 05TH DAY OF MAY 2020 / 15TH VAISAKHA, 1942

B.A.TMP NO.42 OF 2020

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

Petitioner/Accused No.6

Nithin.N.N, aged 32 years,
S/o Narayanankutty,
Nilamputhuvil House, Pattupura Nagar,
Kakkanadu Village, Ernakulam District

By Adv.Sri.M.B.Sandeep

Respondent/Complainant:

State of Kerala rep.by Assistant
Commissioner of Police,
District Crime Branch,Kochi
through Public Prosecutor ,
High Court of Kerala

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

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ALONG WITH
BA.TMP.NO.21 OF 2020 ON 05.05.2020, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.TMP.Nos. 21 & 42 of 2020

Dated this the 5th day of May, 2020

C O M M O N O R D E R

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

2. Petitioners are the 1st and 6th accused in Crime No.83 of 2020 of Thrikkakara Police Station. The two bail applications are disposed together, because petitioner in both cases are accused in the same crime. The petitioner in B.A.TMP.No.21 of 2020 was arrested on 02.03.2020 and the petitioner in B.A.TMP.No.42 of 2020 was arrested on 04.03.2020. The case is registered alleging offences punishable under Sections 120(b), 403, 406, 409, 420, 465, 468, 471 and 477 A of IPC and Section 65 and 43(i) read with Section 66, 66(C) and 66(D) of the I.T. Act and Section 13(1)(a) of Prevention of Corruption Act, 1988.

3. The prosecution case is that the 1st accused was

working as the clerk in the Disaster Management Cell, Collectorate, Ernakulam. Accused nos. 2 to 7 are private persons. It is alleged that accused no.1 entered into a criminal conspiracy with accused nos. 2 to 7 with an intent to misappropriate money from Chief Minister's Distress Relief Fund (CMDRF). In pursuance of the conspiracy accused no.1 transferred money from CMDRF to the account of accused nos. 2 to 7 by using the user name and password supplied to him by his Superior. Further the accused transferred various amounts from the CMDRF to his own account in different banks.

4. The counsel for the petitioners submitted that the petitioners are in custody for about 60 days, investigation of the case is almost over. The counsel for the petitioner further submitted that, they are innocent of the case and they are ready to abide any conditions imposed by this Court, if they are released on bail.

5. The learned Public Prosecutor submitted that it is a very serious case. CMDRF is a fund for the purpose of needy

people and the case against the petitioners is that, they misappropriated the fund of CMDRF. CMDRF is created mainly based on the donation from the citizens and other organisations. If such fund is misappropriated, it is a grievous offence and the petitioners may not be released on bail.

6. After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. The citizens of this State are donating money to CMDRF with a bonafide belief that, it will be used for the needy people. The Government is taking steps to use the fund for that purpose alone. Now the allegation is that, the petitioners are misappropriating the fund. The offence alleged includes Section 409 of IPC, which is an offence punishable with imprisonment for life. Moreover, the investigation in this case is in the preliminary stage. The character and behaviour of the petitioners in the facts and circumstances of the case cannot be justified. Moreover, in the larger interest of the public and State, if the petitioners are released on bail at

this stage, it will give a wrong signal to the society.

7. Moreover, the jurisdiction to grant bail has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in **Chidambaram P v Central Bureau of Investigation (AIR 2019 SC 5272)** the following factors are to be taken into consideration while considering the application for bail.

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are

peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

It is true that there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be decided on the basis of the facts and circumstances of that case. In the light of the general principles laid down in the above judgment and considering the facts and circumstances of this case, I am of the opinion that this is not a fit case in which the petitioner can be released on bail. Hence this Bail Application is dismissed.

P.V.KUNHIKRISHNAN, JUDGE

VPK