

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 5TH DAY OF MAY, 2020 / 15TH VAISAKHA, 1942

B.A. TMP No. 269 / 2020

(C.C No.80/2019 of Chief Judicial Magistrate, Thalassery, arising from Crime.No.824/2011 of CBCID EOW-III ,Kozhikode, arising from Crime No. 495/2011 of Payannur Police Station)

PETITIONER/8th ACCUSED:

S.D.Chinna Rao, 35 years, S/o.Venkiteswara Rao, No.179, Alagiri Street, Majestic Colony, Majestic Colony, Valsalavakkam, Chennai.

By Adv. Sri Rajit

RESPONDENTS:

1. State of Kerala, Represented by the Public Prosecutor, High Court of Kerala, Ernakulam, Kochi-682 031.
2. The Sub Inspector of Police, Payannur Police Station

SRI. AJITH MURALI, PP
SRI. SANTHOSH PETER, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.TMP. No.269 of 2020

Dated this the 5th day of May, 2020

ORDER

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

2. Petitioner is the 8th accused in C.C.No.80/2019 of Chief Judicial Magistrate, Thalassery. The above case is charge sheeted by the CBCID EOW-III, Kozhikode. Petitioner was arrested on 03.02.2020.

3. The prosecution case is that the petitioner who was one of the directors of the company called Nano Excel Corporation and the petitioner along with the co-accused who were the directors and share holders of a Hyderabad and New Delhi based company by name 'Nano Excel Power Corporation' have dishonestly collected huge amounts from customers during various periods by inducing them with false promises and made the customers to deposit money in the accounts of the accused, which were not repaid as promised. Allegedly,

the petitioner and the co-accused have conducted money chain business.

4. The case is charge sheeted alleging offence punishable under Sections 420, 120B read with 34 IPC and Sections 4, 5, 6 of Prize Money Chits and Money Circulation Scheme (Banning) Act, 1978.

5. The counsel for the petitioner submitted that all over 684 cases registered against the petitioner and other accused with similar allegations. Among this 684 cases, in 357 cases the prosecution already filed the final report and other 327 cases are in the crime stage. The counsel for the petitioner further submitted that the other accused in the case are on bail. He also submitted that in almost all the cases the petitioner is on bail. In such circumstances he may be released on bail. He is ready to abide any conditions imposed by this Court.

6. The learned Public Prosecutor submitted that, he is not aware whether the other accused are on bail. But if this

Court is granting bail stringent conditions may be imposed for ensuring the presence of the petitioner during the trial.

7. Considering the facts and circumstances of this case and also consider the fact that all other accused are released on bail, I think the petitioner also is entitle bail. It is to be noted that the petitioner is one of the director of the company. The Managing Director of the company is already on bail. The contention of the petitioner is that he is only a name sake director and he is not involved in the day today affairs of the company. Anyway these matters are to be decided at the time of trial. To continue detention of the petitioner may not be necessary at this stage. Hence, the petitioner can be released on bail.

8. 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.

9. 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.

10. 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 he 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 he is 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. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

VPK