

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.51 OF 2020

(S.C No. 845/2018 of Additional Assistant Sessions Court,
Irinjalakuda, Thrissur, FIR No. 112/2018 of Chalakudy Police
Station)

Petitioner/Accused No. 5:

Ikramul Sheik, Aged 41,
S/o. Fakkir Munna,
Majeed Mahal Tolla,
South Palash Gachi,
Udduva Sahib Ganch,
Jharkhand.

BY ADV.SRI.VIMAL DEV

Respondent:

State of Kerala, Rep. by
The Public Prosecutor,
High Court of Kerala,
Kochi - 31

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

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 05.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A. TMP. No.51 of 2020

Dated this the 5th 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 the 5th accused in S.C.No.845/2018 on the file of Additional Assistant Sessions Court, Irinjalakuda. The above case is registered against the petitioner and others alleging offences punishable under Sections 457, 461, 380, 436, 120(b) read with 34 of IPC. Petitioner was arrested on 08.04.2018 and he is in custody.

3. The prosecution case in brief is that, sometime between the night of 27.01.2018, 28.01.2018 and 29.01.2018, the accused persons totaling 9 in numbers committed theft of 15 Kg of gold ornaments worth Rs.4 Crores and 6 Lakhs in cash from the locker of a jewellery

owned by the defacto complainant and thereby they committed the above offences.

4. The counsel for the petitioner submitted that the petitioner is in custody from 08.04.2018, onwards. The trial in the case is not even now concluded and hence the petitioner may be granted bail.

5. The learned Public Prosecutor submitted that the petitioner is the 5th accused. The final report is already filed and the matter is already pending before the Additional Assistant Sessions Court, Irinjalakuda as S.C.No.845/2018. There are chances for committing similar offences, if the petitioner is 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 petitioner is in custody from 08.04.2018. The main allegation against the petitioner and other accused is theft of gold from a jewellery. The final report of the case is already filed and the matter is pending in the trial court for trial. In such circumstances, the release of the petitioner is

not necessary at this stage. Moreover, the contention of the learned Public Prosecutor, if the petitioner is released on bail, there is chance for committing similar offences by him cannot be ruled out at this stage. Moreover, if the petitioner is released on bail that will give a wrong signal to the society at large.

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