



2023/KER/47339

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 26TH DAY OF JULY 2023 / 4TH SRAVANA, 1945

BAIL APPL. NO. 1823 OF 2021

PETITIONER:

M.A. MOHANAN NAIR
AGED 54 YEARS
SYAM NIVAS, INCHAKKAL, PERINJOTTACKAL P.O, KONNI, PATHANAMTHITTA
PATHANAMTHITTA, PIN - 689692
BY ADV ANILA UMESH

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, PIN - 682031
- 2 STATION HOUSE OFFICER
KONNI POLICE STATION, PATHANAMTHITTA
PATHANAMTHITTA, PIN - 689691
- 3 ADDL R3 IMMANUEL DAVID
AGED 51 YEARS
JOINT REGISTRAR, GENERAL, SAHAKARARANA SANGAM, PATHANAMTHITTA,
KONNY, PATHANAMTHITTA, KERALA 689 691. IS IMPLEADED AS ADDL R3 AS
PER ORDER DATED 26/2/2021 IN CRL MA 1/2021
BY ADV PUBLIC PROSECUTOR

OTHER PRESENT:

SR PP P G MANU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
26.07.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



CR

ORDER

Dated this the 26th day of July, 2023

This is an application for anticipatory bail filed by the 3rd accused in Crime No. 796/2019 of Konni Police Station, Pathanamthitta.

2. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor. Perused the relevant documents available, including the report placed by the learned Public Prosecutor.

3. The prosecution case is that the accused in this crime, who are the President, the Secretary and other staff of Konni Regional Co-operative Bank (hereinafter referred to as the 'Bank') misappropriated an amount of Rs.5,39,15,655.35/- (Rupees five crore thirty-nine lakh fifteen thousand six hundred fifty-five rupees and thirty five paise only) in the name of the members without their knowledge, by creating forged documents and

**CR**

using the same as genuine. Thus the prosecution allegation is that the accused committed offences of forgery, breach of trust as well as cheating punishable under Sections 468, 408, 409, 420 r/w 34 of the IPC.

4. The learned counsel appearing for the petitioner would submit that the petitioner is innocent and he is the peon of the Bank. Therefore, he could not commit the offence and the misappropriation is at the hands of the 1st accused, the Secretary, 2nd accused, the junior clerk and the President of the bank. According to the learned counsel appearing for the petitioner, the petitioner is absolutely innocent, and therefore, the petitioner deserves anticipatory bail.

5. The learned Public Prosecutor submitted that very serious offences are alleged to be committed and the amount would come to Rs.5,39,15,655.35/- (Rupees five crore thirty-nine lakh fifteen thousand six hundred fifty-five rupees and thirty-five

**CR**

paise only). However, the learned Public Prosecutor placed the report of the Investigating Officer dated 19th July, 2023 to the effect that, in this matter, the investigation has been completed and charge sheet/final report already filed before the Judicial First Class Magistrate's Court-II, Pathanamthitta on 22.07.2021 and the matter has been pending as C.C. No. 656/2021.

6. Before addressing the merit of the anticipatory bail application, I am inclined to refer a shocking aspect in this matter. It is anxious to note that, this anticipatory bail application was originally filed on 16.02.2021 and the same has been pending since 16.02.2021. It is to be noted that as on 18.02.2021, when this bail application posted for admission, this court passed an interim order 'not to arrest the petitioner' and banking on the said order the petitioner avoided arrest and his aid in the matter of investigation has been well avoided. Consequently, investigation was completed without questioning

**CR**

the petitioner and without collecting materials to prove the allegation of forgery based on his statement.

7. Thereafter, this matter was again placed before the Court dealing with bail application on 26.02.2021, and then the de facto complainant got impleaded as additional 3rd respondent. After issuing notice to the additional 3rd respondent, this case was posted on 18.03.2021. Thereafter, this case never posted before the appropriate bench and it was posted for the first time before this bench on 19.07.2023, that is after expiry of two years and four months on maintaining the interim order restraining the arrest of the petitioner. It is relevant to note that, in view of the interim order passed by this court 'not to arrest the petitioner' the petitioner was not arrested and even without questioning and recording the statement of a prime accused, who is one among the staff alleged to be involved in the misappropriation of Rs.5,39,15,655.35/- (Rupees five crore thirty-nine lakhs fifteen

**CR**

thousand six hundred fifty-five rupees and thirty-five paisa only) by forging documents cleverly avoided his arrest without co-operating with the investigation. During the pendency of this petition, investigation was completed and final report filed. Whether the final report was filed after effective investigation is a matter of concern.

8. At this juncture, in the interest of justice and to safeguard the criminal justice delivery system, I am inclined to mention certain instances of similar nature, in hundreds of cases, which I came across, where after filing anticipatory bail applications starting from the year 2020 onwards and on getting interim protection 'not to arrest' the bail applicants avoided arrest in many cases where very serious offences are alleged to be committed by the bail applicants including offences under Section 376, 307, 326, 406, 409, 395, 420 of the IPC etc., (the list of offences is not exhaustive). It is disgust to note that in

**CR**

view of the interim order passed by this court 'not to arrest', the hands of the Investigating Officer have been chained and therefore, proper investigation of serious crimes, where custodial interrogation, recording of statement of the accused, recovery of weapon-facts, at their instance were curtailed and in such a way the possibility of conviction in serious crimes has been given a go-bye as a result of ineffective investigation. It is appalling to note that in crimes involving allegation of offences under Section 376 of the IPC where the medical examination of the bail applicant/s (accused) to prove the potency which is an essential ingredient to be proved in such cases also became impossible and in such cases also final report filed facilitating acquittal of the accused for want of collection of material evidence at the instance of the accused. Similarly, in cases involving allegation of forgery (as in the facts of this case) also the specimen signature, handwriting, etc., which are essential to prove the allegations could not be collected by the Investigating

**CR**

Officer and the Investigating Officer was forced to file final report without opting for the said vital mode of investigation. Invariably the ultimatum of such investigation results in acquittal of the accused for want of evidence and the said practice should be avoided to save the system in tact.

9. It is in this context time bound disposal of anticipatory bail applications assumes significant. In this connection it is *appositus* a recent decision of the Apex Court reported in **2022 ICO 1029 Satender Kumar Antil v. Central Bureau of Investigation & Others**, where the Apex Court in paragraph No. 73 of the judgment issued specific direction that *Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.*

**CR**

Prior to ***Satender Kumar Antil (Supra)*** in the decision reported in ***2017 5 Supreme Court Cases 702 Hussain and Another v. Union of India***, in paragraph No. 22 while issuing various directions for the successful implementation of plan to dispose of cases of under trials and timely disposal of the bail applications the Apex Court ordered that *as far as possible, bail applications in subordinate courts should ordinarily be decided within one week and in High Courts within two-three weeks.*

10. In view of the decision in ***Hussain and Another (Supra)*** this court issued direction to the subordinate courts to dispose of bail applications within one week.

11. No doubt, the directions issued by the apex Court in ***Satender Kumar Antil (Supra) and Hussain and Another (Supra)*** are binding on this court under Article 141 of the Constitution of India and this court also should follow the directions while disposing bail applications and therefore

**CR**

anticipatory bail applications should ordinarily be disposed of within two-three weeks as held in ***Hussain and Another (Supra)*** or within a period of six weeks as held in ***Satender Kumar Antil (Supra)***.

12. In the instant anticipatory bail application and in umpteen numbers of anticipatory bail applications, I came across after passing order 'not to arrest' anticipatory bail applications not seen posted before the bench and the Registry used to post such applications after years and that is why anticipatory bail applications where 'not to arrest' order were issued have been pending starting from 2020 onwards. Therefore, in order to curtail the said practice Registrar (Judicial) shall ensure posting of such anticipatory bail applications before the bench dealing with the roster to facilitate timely disposal of anticipatory bail applications by this court in obedience to the directions given by the Apex Court ***Hussain and Another (Supra)*** and ***Satender***

**CR*****Kumar Antil (Supra).***

13. Coming to the merits of the case, according to the learned counsel appearing for the petitioner, the petitioner, who is the peon of the Bank has no role in this case and he deserves anticipatory bail. Even though the petitioner moved anticipatory bail before the Sessions Court, Pathanamthitta, the same was dismissed as early on 05th February 2021. Thereafter, as rightly argued by the learned counsel appearing for the petitioner, as per Annexure A3 order in B.A. No. 511/2020 dated 13.07.2020 this court granted anticipatory bail to the 4th accused, the President of the Bank mainly on the finding that the question as to whether the President of the Bank was actively involved in this case is a matter to be investigated by the Investigating Officer, with direction to co-operate with the investigation.

14. In this matter, since the misappropriation involves Rs.5,39,15,655.35/- (Rupees five crore thirty-nine lakhs fifteen

**CR**

thousand six hundred fifty-five rupees and thirty-five paise only), that too by forging documents, the investigation should have been effected after questioning the petitioner, who is one among the prime accused to collect material evidence to prove the allegations. But, in view of the interim order passed by this court, 'not to arrest' the petitioner, the Investigating Officer was not in a position to arrest the petitioner and thereafter, the investigation was completed and the final report filed without collecting relevant materials after questioning the petitioner.

15. Since it is submitted by the learned Public Prosecutor that final report already filed, I am of the view that the petitioner is at liberty to move for regular bail. Keeping the said liberty, this this petition stands disposed of.

In view of the discussion, the Registrar (Judicial) is directed to ensure posting of anticipatory bail applications, including anticipatory bail applications where 'not to arrest' order is in



CR

force, before the bench dealing with the roster to facilitate timely disposal of anticipatory bail applications by this court in obedience to the directions given by the Hon'ble Apex Court ***Hussain and Another (Supra) and Satender Kumar Antil (Supra)***, here after without fail.

Sd/-

**A. BADHARUDEEN
JUDGE**

RMV

TRUE COPY

P.A. TO JUDGE