



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

FRIDAY, THE 15TH DAY OF MARCH 2024 / 25TH PHALGUNA, 1945

BAIL APPL. NO. 2192 OF 2024

CRIME NO.0230/2024 OF Cantonment Police Station,
Thiruvananthapuram

PETITIONER/S:

- 1 JOMET MICHAEL,AGED 34 YEARS
S/O. MICHAEL, ARACKAL- HOUSE, CHULLY- POST,
KASARGODE-DISTRICT,, PIN - 671533
- 2 SOOREJ,AGED 30 YEARS
OCC- CHOREOGRAPHER, S/O. CHANDRAN NAIR, VENKADATHU-
HOUSE, PANAGATTOR- POST, TANUR, MALAPPURAM-
DISTRICT, PIN - 676302

BY ADVS.

BIJU ANTONY ALOOR

K.P.PRASANTH

HASEEB HASSAN.M

REBIN VINCENT GRALAN

ASOKAN K.V.

KRISHNASANKAR D.

RESPONDENT/S:

- 1 STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031
- 2 THE STATION HOUSE OFFICER
CANTONMENT POLICE STATION, THIRUVANANTHAPURAM
DISTRICT,, PIN - 695001

Sr PP Smt Seetha S

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
15.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



C.S.DIAS,J

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BA No.2192 of 2024

Dated this the 15th day of February, 2024

ORDER

The application is filed under Section 438 of the Code of Criminal Procedure for an order of pre-arrest bail.

2. The petitioners are the accused 2 and 3 in crime No.230/2024 of the Cantonment Police Station, Thiruvananthapuram, registered against the accused (three in number) for allegedly committing the offences punishable under Sections 406 and 34 of the Indian Penal Code. It is reported that the first accused is no more.

3. The gist of the prosecution case is that: the de facto complainant is the Co-ordinator of the Kerala University Arts Festival, 2024, which was held on 8.3.2024. The Co-ordinator had appointed the first accused to judge the



‘Margamkali’ competition at the Arts Festival. The accused, in furtherance of their common intention to cheat the programme committee and the participating students, under the influence of a particular group of students, the first accused, with a dishonest intention, had awarded higher marks to a lower-performing team. Thus, the accused have committed the above offences.

4. Heard; Sri. B.A Aloor, the learned counsel appearing for the petitioners and Smt.Seetha.S, the learned Public Prosecutor.

5. The learned counsel appearing for the petitioners submitted that the petitioners are innocent of the accusations levelled against them. They have been falsely implicated in the crime. A reading of Annexure-1 FIR would substantiate that the offence under Sec.406 will not be attracted against the petitioners. The cardinal overt act is attributed to the first



accused, who has committed suicide due to harassment by the Police and a faction of students. Furthermore, the Investigating Officer had issued Annexures 2 and 2(a) notices to the petitioners under Sec.41 A of the Code of Criminal Procedure (for short, 'Code'), to appear before him for interrogation, which substantiates that the petitioners' custodial interrogation is unnecessary. No recovery is also to be effected. The petitioners are willing to cooperate with the investigation and abide by any stringent condition that this Court may impose. Hence, the application may be allowed.

6. The learned Public Prosecutor seriously opposed the application. She submitted that there are incriminating materials to establish the petitioners' complicity in the crime. The petitioners' custodial interrogation is necessary for the proper and full investigation of the crime. Nonetheless, she conceded to the fact that the first accused had an unnatural



death and Annexures 2 and 2(a) notices have been issued to the petitioners under Sec.41A of the Code. She prayed that the application be dismissed.

7. On an evaluation of the materials placed on record, it can be gathered that the cardinal allegation is attributed to the first accused, who had judged the 'Margamkali' competition in the Arts Festival. The first accused was admittedly a panellist Judge selected by the organisers because of his competence, integrity and expertise. The first accused judged the competition, awarded marks as per his expertise and declared one of the teams as the winner.

8. Now, the de facto complainant alleges that the first accused has, in collusion with the petitioners, dishonestly awarded more marks to the winning team. Hence, the accused have committed the offence under Sec.406 of the IPC.



9. Section 405 of the India Penal Code defines ‘criminal breach of trust’ and Section 406 prescribes the punishment for committing the offence. It is apposite to refer to the said provisions, which reads as follows:

405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

Explanation 1.— A person, being an employer of an establishment whether exempted under section 17 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee’s contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.— A person, being an employer, who deducts the employees’ contribution from the wages payable to the employee for credit to the Employees’ State Insurance Fund held and administered by the Employees’ State Insurance Corporation established under the Employees’ State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.



406. Punishment for criminal breach of trust. – Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

10. A careful reading of Sec.405 of the Indian Penal Code establishes that the necessary ingredients to attract the above offence, in the context of cases like the one on hand, is that a person has to be entrusted with the dominion of the property and he dishonestly uses the property in violation of any directions prescribing the mode in which the trust is to be discharged.

11. Recently, the Hon'ble Supreme Court in **Jay Shri vs. State of Rajasthan [2024 KHC Online 8022]**, interpreting Sec.406 of the IPC, in an application filed for an order of pre-arrest bail, observed that to attract the offence under Secs.420 and 406 of the IPC it is necessary to establish the dishonest intention at the beginning of the transaction.

12. In the instant case, it was the organisers of the festival who included the first accused in the panel of Judges,



due to his competence, integrity and expertise and made him judge the competition.

13. On an appreciation of the facts, the rival submissions made across the Bar, the materials placed on record and the findings rendered above, this Court is prima facie of the opinion that the offence attributed against the petitioners may not be attracted. Furthermore, I find that the petitioners' custodial interrogation is unnecessary. Hence, I am satisfied that the petitioners have made out exceptional grounds to invoke the extraordinary jurisdiction of this Court under Sec.438 of the Code. Consequentially, I am inclined to allow the bail application.

14. In the result, the application is allowed subject to the following conditions:

i) The petitioners are directed to surrender before the Investigating Officer within one week from today.



ii) In the event of the petitioners' arrest, the Investigating Officer shall produce them before the jurisdictional court on the date of surrender itself.

iii) On such production, the jurisdictional court shall release the petitioners on bail on them executing a bond for Rs.50,000/- (Rupees fifty thousand only), with two solvent sureties for the like amount each, to the satisfaction of the jurisdictional court;

iv) The petitioners shall co-operate with the investigation and make themselves available for interrogation and for the purpose of investigation as and when the Investigating Officer directs;

v). The petitioners shall not intimidate witnesses or interfere with the investigation in any manner;

vi). The petitioners shall not get involved in any other offence while on bail.



vii). In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

viii). Applications for deletion/modification of the bail conditions shall also be filed before the court below.

(ix) Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioners even while the petitioners are on bail as laid down by the Hon'ble Supreme Court in **Sushila Aggarwal v. State (NCT of Delhi) and another** [2020 (1) KHC 663].

(x) The observations made in this order are only for the purpose of considering the application and the same shall not



be construed to be an expression of the merits of the case,
which is to be decided by the jurisdictional court(s).

SD/-

sks/15.3.2024

C.S.DIAS, JUDGE