



2024/KER/6345

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.S.DIAS

TUESDAY, THE 30<sup>TH</sup> DAY OF JANUARY 2024 / 10TH MAGHA, 1945

BAIL APPL. NO. 10316 OF 2023

CRIME NO.1030/2023 OF CANTONMENT POLICE STATION,

THIRUVANANTHAPURAM

PETITIONER/2ND ACCUSED:

LENIN RAJ. A.K,



RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT  
OF KERALA, ERNAKULAM, KOCHI, PIN - 682031
- 2 STATION HOUSE OFFICER,  
CANTONEMENT POLICE STATION, REPRESENTED BY PUBLIC  
PROSECUTOR, PIN - 695001

OTHER PRESENT:

SR.P.P.NEEMA T.V.

THIS BAIL APPLICATION HAVING COME UP FOR  
ADMISSION ON 25.01.2024, THE COURT ON  
30.01.2024 PASSED THE FOLLOWING:



**C.S.DIAS,J**

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**Bail Application No.10316 of 2023**

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**Dated this the 30<sup>th</sup> day of January, 2024**

**ORDER**

The application is filed under Section 438 of the Code of Criminal Procedure, 1973 (*'Code', for short*), for an order of pre-arrest bail.

2. The petitioner is the second accused in Crime No. 1030 of 2023 of the Cantonment Police Station, Thiruvananthapuram, registered against the accused (2 in number) for allegedly committing the offences punishable under Sections. 419, 420, 165, 468, 471, 120(B) and 34 of the Indian Penal Code and Section 66(D) of the Information Technology Act.



3. The gist of the prosecution case is that: an unknown person impersonated himself as Akhil Mathew- the defacto complainant- who is the Personal Assistant to the Health Minister of Kerala. The said person convinced one Haridas (victim) that he would secure an employment for his daughter-in-law in the Health Department. Accordingly, the victim paid substantial amounts to the person. But, the person did not secure the employment or return the money. The investigation further revealed that the victim had transferred Rs.50,000 to the bank account of the second accused. The accused had also created an email id as [nationalayushmissionkerala@gmail.com](mailto:nationalayushmissionkerala@gmail.com) using the mobile numbers of the third accused. Similarly, Rs.25,000/- was transferred by the victim to the bank account of the first accused. The first accused has impersonated himself as the defacto complainant and attempted to tarnish the image of the office of the Health Minister. The first accused has criminal antecedents, as he is involved in ten other cases of



similar nature registered by the Pathanamthitta and Kollam West Police Station. The second accused is an accused in Crime No. 139/11 of Kakkoor Police Station. The investigation is at its preliminary stage. The custodial interrogation of the accused is necessary for the proper and full investigation of the case. Recovery is to be effected. The accused have committed a grave financial crime. There is every likelihood of the accused intimidating the witnesses and tampering with the evidence, and committing similar offences, if they are released on bail. Hence, the application may be dismissed.

4. Heard; Sri. K. Ramkumar, the learned Senior Counsel appearing for the petitioner and Smt. Neema T.V, the learned Senior Public Prosecutor.

5. The learned Senior Counsel argued that the petitioner has been falsely implicated in the crime. The petitioner is a legal practitioner. Apart from openly receiving money towards his remuneration, there is no specific overt act attributed against the petitioner. The



police have registered the crime due to the influence of the defacto complainant, who is a staff in the office of the Health Minister of the State. There is no material to link the petitioner in the above crime. At any rate, the petitioner's custodial interrogation is not necessary. The petitioner is willing to abide by any stringent condition that may be imposed by this Court. Hence, the application may be allowed.

6. The learned Public Prosecutor strenuously opposed the application. She submitted that the petitioner and the first accused have conspired and cheated several persons by offering them government jobs. The accused have criminal antecedents. There are ten cases registered against the first accused and one case against the petitioner. The investigation is only at its nascent stage. The recovery is to be effected. If the petitioner is released on bail, he would intimidate the witnesses and tamper with the evidence. Hence, the application may be dismissed.



7. In **Siddharam Satlingappa Mhetre v. State of Maharashtra** [(2011) 1 SCC 694] the Hon'ble Supreme Court has held as follows:

**111.** No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

**112.** The following factors and parameters can be taken into consideration while dealing with the anticipatory bail: (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;



(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

**126.** We deem it appropriate to reiterate and assert that discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.



8. In **Jai Prakash Singh v. State of Bihar and another**, [(2012) 4 SCC 379] the Hon'ble Supreme Court has held that, an order of pre-arrest bail being an extra ordinary privilege, should be granted only in exceptional cases. The judicial discretion conferred upon the Courts has to be properly exercised, after proper application of mind, to decide whether it is a fit case to grant an order of pre-arrest bail. The court has to be prima facie satisfied that the applicant has been falsely enroped in the crime and his liberty is being misused.

9. On an anxious consideration of the materials placed on record, particularly taking note of the financial transaction between the victim and the petitioner, the criminal antecedents of the petitioner and the first accused, that the investigation of the case is only at its preliminary stage, that the custodial interrogation of the petitioner is necessary and recovery is to be effected, I am of the definite view that the petitioner is not entitled to an order of pre-arrest





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bail. As the offence alleged against the petitioner is serious and grave, I am not inclined to grant an order of pre-arrest bail. The application is meritless and is only liable to be dismissed.

Resultantly, the application is dismissed.

**Sd/- C.S.DIAS,JUDGE**

ma/26.1.2024



**APPENDIX OF BAIL APPL. 10316/2023**

PETITIONER ANNEXURES

Annexure A1

THE TRUE COPY OF THE ORDER PASSED BY THE  
HON'BLE COURT OF SESSIONS,  
THIRUVANANTHAPURAM, DATED 21ST DAY OF  
OCTOBER 2023 IN CRIMINAL MISCELLANEOUS  
CASE NO. 2641 OF 2023