



2024:KER:4967

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 23<sup>RD</sup> DAY OF JANUARY 2024 / 3RD MAGHA, 1945

BAIL APPL. NO. 11038 OF 2023

CRIME NO.767/2023 OF CRIME BRANCH, THIRUVANANTHAPURAM,  
THIRUVANANTHAPURAM

PETITIONER/ACCUSED NO.17:

SANTHAKUMARI AMMA N,  
AGED 59 YEARS

BY ADV M.R.SASITH

RESPONDENT/COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682031
- 2 THE DEPUTY SUPERINTENDENT  
CRIME BRANCH ECONOMIC OFFENCE DEPARTMENT,  
THIRUVANANTHAPURAM UNIT,, PIN - 695003

OTHER PRESENT:

SR PP SRI C S HRITHWIK

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
23.01.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**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 accused No.17 in Crime No.767 of 2023 of Crime Branch Police Station, Thiruvananthapuram registered against the accused (eighteen in number) for allegedly committing the offences punishable under Sections 408, 409, 420, 120B, 468, 471, 477A r/w 34 of the Indian Penal Code, 1860, ('IPC', for short) and Sections 3 r/w 21, 5 r/w 23 & 25 of the BUDS Act.

3. The gist of the prosecution case is that:-the accused No.1 along with the other accused, misappropriated an amount of Rs.7,50,000/- from the de facto complainant's mother on the promise that the accused No.1 was the President of the BSNL Engineers Co-operative Society and he could accept deposits and pay interest. But, the accused



misappropriated the amounts that were received from the depositors. Thus, the accused have committed the above offences.

4. Heard; Sri.M.R.Sasith, the learned counsel appearing for the petitioner and Sri.C.S.Hrithwik, the learned Senior Public Prosecutor appearing for the respondent.

5. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against her. The petitioner is a lady. She has been made an accused only on the assertion that she has a relationship with the accused No.1. The petitioner was served with a notice under Section 41A of the Code of Criminal Procedure and she was interrogated. Therefore, the petitioner's custodial interrogation is not necessary. Hence, an order of pre-arrest bail may be passed.

6. The learned Public Prosecutor opposed the



application. He contended that the petitioner is the mastermind behind the crime. There are 1775 victims who have been cheated by the accused. The investigation is handed over to the Crime Branch. The investigation is in progress. If the petitioner is granted an order of pre-arrest bail, she can hamper the investigation. 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. Likewise, in **Gurbaksh Singh Sibbia v. State of Punjab**, (1980) 2 SCC 565 ] the Hon'ble Supreme Court has held as follows:

21. The High Court says in its fourth proposition that in addition to the limitations mentioned in Section 437, the petitioner must make out a "special case" for the exercise of the power to grant anticipatory bail. This, virtually, reduces the salutary power conferred by Section 438 to a dead letter. In its anxiety, otherwise just, to show that the power conferred by Section 438 is not "unguided or uncanalised", the High Court has subjected that power to a restraint which will have the effect of making the power utterly unguided. To say that the applicant must make out a "special case" for the exercise of the power to grant anticipatory bail is really to say nothing. The applicant has undoubtedly to make out a case for the grant of anticipatory bail. But one cannot go further and say that he must make out a "special case". We do not see why the provisions of Section 438 should be suspected as containing something volatile or incendiary, which needs to be handled with the greatest care and caution imaginable. A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail.

9. On an anxious consideration of the materials



placed on record, particularly taking note of the nature, gravity, and seriousness of the offence alleged against the petitioner, that the petitioner's custodial interrogation is necessary and that the investigation is in progress, I am of the definite view that the petitioner is not entitled to invoke the extra ordinary jurisdiction of this Court under Sec.438 of the Code. Therefore, I am of the view that this is not a fit case to grant an order of pre-arrest bail. Consequently, the bail application is dismissed.

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

AS