

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

WEDNESDAY, THE 21ST DAY OF OCTOBER 2020 / 29TH ASWINA, 1942

Cr1.MC.No.4051 OF 2020(F)

AGAINST THE ORDER/JUDGMENT IN CRMC 786/2020 DATED 07-08-2020 OF
ADDITIONAL DISTRICT COURT KOZHIKODE-III

CRIME NO.606/2019 OF Chevayur Police Station , Kozhikode

PETITIONER/RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE STATION HOUSE OFFICER, CHEVAYOOR
POLICE STATION, KOZHIKODE.

BY
ADV.SRI SUMAN CHAKRAVARTHY, GOVERNMENT PLEDER (FOR
DGP)

RESPONDENT/3RD ACCUSED/PETITIONER:

1 ANSAR M.C. ,
AGED 34 YEARS
S/O.MUHAMMED, MAYANGOT HOUSE, POOVATTUPARAMBA,
KOZHIKODE, PIN - 673 008.

ADDL.2 SHAJI K.K.
AGED 46 YEARS, S/O K, PADMANABHAN, THAZHATHU VEETTIL
HOUSE, EDAKKARA P. O., CHELANNUR VIA, KOZHIKODE -673
616

(IS IMPEADED AS ADDITIONAL 2ND RESPONDENT AS PER
ORDER DATED 21.10.2011 IN CRL.M.A. NO.2/2020)

R1 BY ADV. SRI.RENJITH B.MARAR
R1 BY ADV. SRI.E.A.HARIS
ADDL.R2 BY ADV. KRISHNADAS P. NAIR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
21.10.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The State Government came up challenging the anticipatory bail granted under Section 438 Cr.P.C. by the learned Sessions Judge on the simple reason that no crime was registered against the accused/first respondent till that time. It is after more or less one month, the first respondent was impleaded in the array of accused. The crime was earlier registered on the allegation of offence under Section 307, 324 r/w Section 34 IPC. Subsequently, Section 326 IPC was incorporated.

2. The present application is submitted both under Section 482 and 439(2) Cr.P.C. on the allegation that the earlier order granting anticipatory bail was used by the first respondent to avoid his arrest in connection with his impleadment subsequently as an accused in the existing crime. Going by the order granting anticipatory bail, prima facie, it appears that a

fatal mistake crept in the order. When no crime was registered against the first respondent, it is not permissible to grant anticipatory bail, on the reason that it would act as a blanket as against all sort of accusations which may arise in future against the said person. No blanket order should be passed under Section 438 Cr.P.C. to prevent the accused from being arrested when there is no crime registered against him. So the procedure to be adopted is to direct the investigation to comply with the requirement under Section 41 A Cr.P.C., before effecting the arrest of accused so as to enable him to exhaust the remedy under Section 438 Cr.P.C. The defect crept in the order cannot be cured under Section 439(2) Cr.P.C. because of the reason that the accused will get a right to exhaust the remedy under Section 438 Cr.P.C. based on the subsequent accusation and it cannot be curtailed by invoking the jurisdiction under Section 439(2) Cr.P.C. By reserving the right of the first respondent

to exhaust the remedy under Section 438 Cr.P.C. based on the present accusation, it is fit and proper to set aside the order granting anticipatory bail on the ground of non-registration of crime. Hence the inherent power under Section 482 Cr.P.C. is invoked and the order granting anticipatory bail is hereby quashed.

Cr1.M.C. is allowed accordingly.

Sd/-

P. SOMARAJAN

JUDGE

SPV

APPENDIX

PETITIONER'S EXHIBITS:

- ANNEXURE A THE TRUE COPY OF THE FIR IN CRIME
NO.606/2019 OF CHEVAYOOR POLICE
STATION.
- ANNEXURE B THE TRUE COPY OF THE BALL APPLICATION
DATED 05/08/2020 FILED BY THE
RESPONDENT BEFORE THE SESSIONS COURT,
KOZHIKODE.
- ANNEXURE C THE TRUE COPY OF THE OBJECTION FILED
BY THE INVESTIGATING OFFICER.
- ANNEXURE D THE TRUE COPY OF THE ORDER DATED
07/08/2020 IN CRL.M.C.NO.786/2020 OF
IN THE COURT OF THE THIRD ADDITIONAL
SESSIONS JUDGE, KOZHIKODE IN CRIME
NO.606/2019 OF CHEVAYUR POLICE
STATION.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE