



2024/KER/22209

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 19TH DAY OF MARCH 2024 / 29TH PHALGUNA, 1945

CRL.MC NO. 2589 OF 2024

CRIME NO.2558/2023 OF CBCID, THIRUVANANTHAPURAM,

Thiruvananthapuram

AGAINST THE ORDER DATED 06.03.2024 IN CMP NO.651 OF 2024 OF

ADDITIONAL CHIEF JUDICIAL MAGISTRATE, THIRUVANANTHAPURAM

PETITIONER/ 1ST ACCUSED :

RENJITH KUMAR V.K.

AGED 43 YEARS

S/O VENUGOPALAN, AISHWARYA VEEDU,

PANGODE WARD, VENGANOR VILLAGE,

THIRUVANANTHAPURAM, PIN - 695 609

BY ADV LATHEESH SEBASTIAN

RESPONDENT/ STATE & COMPLAINANT :

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 031
- 2 DEPUTY SUPERINTENDENT OF POLICE
CBCID, THIRUVANANTHAPURAM,
PIN - 695 001

SMT.SREEJA V. , PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
19.03.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



"C.R."

BECHU KURIAN THOMAS, J.

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Crl.M.C.No.2589 of 2024

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Dated this the 19th day of March, 2024**ORDER**

Petitioner is an accused in Crime No.2558/2023 and 2557/2023 of the CBCID, Thiruvananthapuram. He faces indictment in a total of 78 cases for offences under Sections 406, 408, 409 and 420 r/w Section 34 of the Indian Penal Code, 1860. Petitioner was arrested on 18.05.2023 on the allegation that he had cheated various persons as an accountant of a Hospital Co-operative Society and failed to return the deposit on demand.

2. Since the petitioner was arrested on 18.05.2023 and the investigation was not completed, he was granted statutory bail on 14-08-2023 and 27.09.2023 in the cases mentioned above. However, till date, petitioner has not been released from custody due to his failure to furnish sufficient sureties. In 25 cases the learned Magistrate accepted the sureties offered by the petitioner. But in Crime No.2558/2023 and 2557/2023, by the impugned order, the Additional Chief Judicial Magistrate, Thiruvananthapuram, refused to accept the second surety offered by the petitioner, stating that the value of the property offered by her was not commensurate with the bond required to be executed. On the



said basis it was held that the second surety does not inspire the confidence of the court.

3. I have considered the submissions of Sri. Latheesh Sebastian, the learned counsel for the petitioner and Smt.V.Sreeja, the learned Public Prosecutor.

4. In **Venugopal v. State of Kerala [2024 KHC online 42]**, this Court observed that separate sureties need not be insisted when there are several cases registered against an accused. Relying upon the said decision, Petitioner's wife and his parents-in-law agreed to stand as separate sureties. As mentioned earlier, in 25 cases, they were accepted as sufficient sureties. Property having an extent of 16.20 Ares belonging to his wife, with a market value of Rs.60,00,000/- (Rupees sixty lakhs only) and another property having an extent of 5.40 Ares with an approximate market value of more than Rs.12,00,000/- (Rupees twelve lakhs only) belonging to his mother-in-law were pointed out as evidence of solvency of the sureties. Since the same properties were offered in the instant two cases as well, the Magistrate refused to accept the second surety, stating that the value of the property was not sufficient to inspire confidence. The finding of the learned Magistrate is legally untenable for the reasons recorded below.

5. The right to be enlarged on statutory bail under Section 167(2) Cr.P.C. is a fundamental right and not merely a statutory right. The said right flows from Article 21 of the Constitution of India and is an



indefeasible part of the right to personal liberty. Neither the prosecution nor even the court cannot frustrate this right of the accused through unreasonable conditions. Reference to the decision in **S. Kasi v. State through the Inspector of Police Samaynallur Police Station Madurai District** [(2021) 12 SCC 1] is appropriate in this context. Similarly, in **Vishnu Sajanan v. State of Kerala** [2023 (7) KHC 686] a learned Single Judge of this Court had observed that the right to statutory bail cannot be defeated by imposing conditions that are too stringent and impossible of performance.

6. However, over the years, some practices developed by courts have defeated the orders granting bail or statutory bail based on improper approaches. Insistence on the production of original title deeds of sureties and retaining them with the court, requiring the value of property to be commensurate with the amount involved in the crime, and imposing excessive bond amounts are some of such practices. A time has come to reiterate that these practices are indefensible and legally untenable. Conditions of bail and the amounts fixed for bail bonds cannot become an unjust source of captivity or detention.

7. Bail bonds are executed by sureties undertaking that they will produce the accused in court when called upon. The amount of the bail bond is provided as a measure of the quantum that can be recovered from the surety in case of failure to abide by the undertaking. The solvency of the surety is only a mode of identifying the sufficiency of the



surety and not wholly as a security for the amount fixed in the bail bond. For the purpose of determining whether the sureties are fit or sufficient, the court can even accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties. The person standing as a surety will have to swear to an affidavit referring to his ability to satisfy the bail conditions in case of breach by the accused and his readiness to produce the accused in court when required to do so. A criminal court can even accept an affidavit sworn to by the surety in proof of the facts stated therein and can satisfy itself about the sufficiency of the surety on that basis.

8. The above principles can be deduced from the statutory provisions. Section 441 of Cr.P.C deals with the bond of an accused and his sureties. The provision contemplates furnishing of a personal bond by the accused and a bond by one or more sufficient sureties. The accused and the sureties have to, therefore, execute only bonds that are sufficient in the mind of the Court for the amount fixed. Section 440 Cr.P.C states that the amount of bond shall not be excessive. Section 441(4) states that for the purpose of determining whether the sureties are fit or sufficient, the court may accept affidavits in proof of the facts contained therein. However, in cases where the affidavit is not accepted, the requisite documents to prove solvency can be insisted.

9. Many a time, Magistrates insist on the production of original title deeds, tax receipts or solvency certificates. The law does not



mandate the production of such documents, and as observed by U L. Bhat, J in **Valson v. State of Kerala** [1984 KLT 443], it is only a practice developed in court without a proper legal sanction. Reference to the observations of the Supreme Court in **Vijaysingh v. Murarilal**, AIR 1979 SC 1719 that there are some magistrates who are never satisfied with the solvency of sureties except when the property of the surety is within their jurisdiction and Revenue Officers have attested their worth, is appropriate in this context.

10. Even though in **Valson's case** (supra), it was observed that the criminal courts are not bestowing adequate attention to the desirability of granting bail on personal bond, leading to orders insisting on sureties to produce solvency certificates, Magistrates even insist on properties being offered as a form of security. In some cases, like the present, Magistrates are not even satisfied with the sufficiency of surety if the value of the property of one of the two sureties is not equivalent to the total value of bond amounts, that too, fixed arbitrarily high. All these lead to the unjust incarceration of the accused, who deserves to be free. It was also observed in the above-referred decision that courts would do well to remember that the purpose of insisting on sureties is only to ensure the presence of the accused in court for the purpose of trial and nothing more. The decision in **Ashraf v. State of Kerala** [(1993) 2 KLT 330] is also relevant in this context.



11. When an accused fails to appear, and the sureties are also unable to produce the accused, the procedure under Section 446 Cr.P.C has to be resorted to. On failure to produce the accused, the surety who is bound by the bond can be called upon to pay a penalty and if unpaid, it can be recovered as per Section 446(2) of Cr.P.C, as if it is a fine imposed under the Code. Further, if the penalty is not paid and the fine cannot be recovered, imprisonment of the surety in jail for a period of upto six months can also be ordered. Thus, various safeguards are provided under the statute to ensure compliance with the bail bonds furnished by the sureties.

12. Though the surety must be a sufficient surety, the quantum of the bond to be executed cannot be made to depend on the amount involved in criminal cases. Courts must of necessity, bear in mind that a criminal proceeding is not instituted to recover the money, if any, involved in a crime. Further, the lookout of the criminal court cannot be to act as a recovery court for the complainant or for the prosecution. When a bond is directed to be executed, it is only intended to act as a compulsion for ensuring the presence of the accused during trial. In the event of the accused failing to appear, the bond executed by the sureties will compel the sureties and bind them to ensure the presence of the accused in court, failing which proceedings can be initiated to recover the money and to impose penalty or even to sentence him to imprisonment.



The sufficiency of a surety is thus not dependent on the solvency or a money equivalent.

13. A person who is entitled to statutory bail cannot be denied his liberty despite offering three separate sureties that too who are immediate relatives and are reasonably solvent. The learned Additional Chief Judicial Magistrate erred in refusing to accept the sureties offered by the petitioner. In this context, this Court is compelled to observe that the learned Additional Chief Judicial Magistrate, Thiruvananthapuram, ought to fix a reasonable bond amount, and in the circumstances, the sureties offered are to be treated as sufficient for releasing the petitioner on bail.

14. Apart from the above, if at all the court feels that the sureties accepted are insufficient, the court is always at liberty to initiate procedure under Section 443 later, to provide further sufficient sureties. The court's attempt should always be in favour of ensuring an individual's liberty in the light of Article 21 of the Constitution of India which must be read into every provision of the Code of Criminal Procedure, 1973. Therefore, this Court believes that the impugned order must be set aside.

15. Accordingly, Annexure 3 order dated 06.03.2024 in CrI.M.P No. 651/2024 in Crime No. 2558/2023 and in CrI.M.P No. 653/2024 in Crime No. 2557/2023 on the files of the Additional Chief Judicial Magistrate, Thiruvananthapuram is set aside. The learned Additional Chief Judicial Magistrate shall issue fresh orders in those applications, in the light of the



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observations made above, immediately, and at any rate, within two working days from the date of receipt of a copy of this order.

The Criminal Miscellaneous Case is allowed as above.

Sd/-

BECHU KURIAN THOMAS, JUDGE

RKM



APPENDIX OF CRL.MC 2589/2024

PETITIONER'S ANNEXURES :

Annexure 1 TRUE COPY OF THE CITIZEN COPY OF FIR IN
CRIME NO.689/2023 OF MEDICAL COLLEGE
POLICE STATION

Annexure 2 TRUE COPY OF THE PETITION IN CMP NO
651/2024 IN CRIME NO. 2558/2023 OF CBCID
OF ACJM COURT, THIRUVANANTHAPURAM

Annexure 3 TRUE COPY OF THE COMMON ORDER DATED
06.03.2024 IN CMP NO.651/2024 AND
653/2024 OF ACJM COURT,
THIRUVANANTHAPURAM