(2022) 12 KL CK 0072

In the High Court Of Kerala

Case No : Bail Application No. 6282 Of 2022

Akbar K.I — APPELLANT

Vs

Union Territory Of Lakshadweep, Rep. By Assistant Solicitor General, High Court Of Kerala, Kochi 682031 — RESPONDENT

Date of Decision : 06-12-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 41A, 438
Indian Penal Code, 1860 — Section 34, 149, 409, 464, 465, 468, 471, 477A
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(1)(d), 13(1)(e), 13(2)

Citation : (2022) 12 KL CK 0072

Hon'ble Judges : K. Babu, J

Bench : Single Bench

Advocate : P.Sanjay, Sajith Kumar V

Final Decision : Dismissed

Judgement

K.Babu, J

1. This is an application filed under Section 438 of the Code of Criminal Procedure.

2. The petitioner is the sole accused in Crime No.21/2022 of Kavaratti Police Station, Union Territory of Lakshadweep. The offences alleged against the petitioner are punishable under Sections 409, 464, 465, 468, 471, 477-A of the Indian Penal Code and Sections 13(1)(c), 13(1)(d), 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988.

3. Prosecution case:

3.1. The petitioner is a retired Government employee. He was employed as Demonstrator in the Department of Agriculture, Kavaratti. The petitioner, being a public servant, has committed criminal breach of trust after forging documents. The petitioner has made falsification of accounts and transferred public money to his personal account and thereafter misappropriated those amounts for his personal purposes. The petitioner has also committed the offence of criminal misconduct by acquiring property disproportionate to his known sources of income.

3.2. On 29.11.2015, Rs.45,000/- was sanctioned by the petitioner to one Mr. V.M.Abdul Gafoor for meeting office expenditure, but remitted to the personal account of the petitioner. The petitioner manipulated the counterfoil of the bank slip to make it appear that the amount has been paid to Sri.V.M.Abdul Gafoor. On the same day, an amount of Rs.85,000/- was sanctioned by the petitioner and remitted to his personal account.

3.3. On 16.01.2016, the petitioner sanctioned Rs.35,000/- in his favour as tour advance for attending KVK, Zone Symposium at University of Agricultural Science, Dharvad, Karnataka, but failed to attend the Symposium or settle the amount.

3.4. A sum of Rs.1,85,497/- was sanctioned by the petitioner in his favour for organizing Fasal Bheema Yojana and remitted to the official account of the programme co-ordinator and thereafter transferred to his personal account. The petitioner himself sanctioned those amounts and drew the money from the account in contravention to the rules and utilised it for his personal expenses.

4. The case of the petitioner is that he is a victim of departmental politics and professional rivalry. According to the petitioner, the aforecaptioned FIR has been registered with intent to falsely implicate him in the crime.

5. Heard Sri. P.Sanjay, the learned counsel appearing for the petitioner and Sri. V. Sajith Kumar, the learned Standing Counsel for the Lakshadweep Administration.

6. The learned counsel for the petitioner submitted that the petitioner has been falsely implicated due to departmental politics and professional rivalry. Consequent to the rivalry, the senior officers and his colleagues are attempting to block his pension and other retirement benefits.

7. The learned Standing Counsel countered and submitted that the materials produced before the Court are sufficient to conclude that the petitioner committed the offences as alleged. The learned Standing Counsel submitted that the investigation is in the preliminary stage and granting bail to the petitioner would affect the progress of the investigation. It is submitted that even after getting notice under Section 41A of the Cr.PC, the petitioner failed to join the investigation. The Standing Counsel contended that the custodial interrogation of the petitioner is required.

8. The learned counsel for the petitioner submitted that in so far as the allegations levelled against the petitioner are concerned the custodial interrogation of the petitioner is not required and therefore, he is entitled to anticipatory bail. The learned counsel submitted that the Investigating agency is only required to verify the official documents to proceed with the investigation

relating to the allegations levelled against the petitioner. Even if no case for the custodial interrogation of the petitioner is made out that alone is not a ground to grant anticipatory bail. While dealing with this question, the Apex Court in Sumitha Pradeep v. Arun Kumar C.K (2022 SCC Online SC 1529) held thus:

“In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

9. The factors and parameters that need to be taken into consideration while dealing with anticipatory bail are:

(1) the nature and gravity of the accusation and the exact role of the accused;

(2) the antecedents of the applicant including imprisonment on conviction for cognizable offence;

(3) possibility of fleeing from justice;

(4) possibility of the accused's likelihood to repeat similar or other offences.

(5) accusations have been made only with the object of injuring or humiliating the applicant by arrest;

(6) impact of grant of anticipatory bail particularly affecting a very large number of people;

(7) courts must evaluate the entire available material carefully; greater care should be taken when the accused is implicated using Sections 34 and 149;

(8) a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(9) court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(10) 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. {Vide: Gurbaksh Singh Sibbia and Ors. v. State of Punjab [(1980) 2 SCC 565], Bhadresh Bipinbhai Sheth v. State of Gujarat [(2016) 1 SCC 152] and Sushila Aggarwal and Ors. v. State (NCT of Delhi) and Ors. [(2020) 5 SCC 1]}.

10. The offences alleged against the petitioner are grave. The petitioner failed to establish that the accusations have been made against him only with the object of injuring or humiliating him by arrest. The petitioner has failed to establish a prima facie case for getting the benefits contained in Section 438 Cr.P.C. Therefore, the petitioner is not entitled to anticipatory bail as prayed for.

11. It is legally permissible for this Court to direct the accused to surrender before the Jurisdictional Court while rejecting a prayer for anticipatory bail [See: Nathu Singh v. State of Uttar Pradesh MANU/SC/0360/2021 : (2021 (3) KLT Online 1113 (SC) and Rahul v. State of Kerala (ILR 2021 (4) Kerala 64)].

12. Resultantly, the prayer for anticipatory bail is rejected. The petitioner is directed to surrender before the jurisdictional Court within a period of two weeks from this date. On his surrender before the jurisdictional Court, if the petitioner prefers an application seeking regular bail, the Court shall dispose of the application preferably on the same day itself.

The Bail Application stands dismissed.

