

(2020) 11 KL CK 0045
In the High Court Of Kerala
Case No : Bail Application No. 6815 Of 2020

Aneesh KG And Anr

APPELLANT

Vs

State Of Kerala And Anr

RESPONDENT

Date of Decision : 20-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 438
Indian Penal Code, 1860 — Section 34, 420, 463, 465, 471

Citation : (2020) 11 KL CK 0045

Hon'ble Judges : P.V. Kunhikrishnan, J

Bench : Single Bench

Advocate : T.K. Biju, G. Priyadarsan Thampi, Sajesh K. Sam, Sindhu R. Nair

Final Decision : Allowed

Judgement

1. This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. Petitioners are the accused in Crime No.1900/2020 of Konny Police Station. Above case is registered against the petitioners alleging offences

punishable under Sections 420, 463, 465, 471 read with Section 34 of IPC. The above case is registered based on a private complaint filed before the

Jurisdictional Magistrate, which was forwarded under Section 156 (3) Cr.P.C.

3. The prosecution case is that, there was some amount due to the defacto complainant towards which the accused issued a cheque, the cheque was

dishonoured with an endorsement 'signature differs'. Therefore, it is alleged that the accused committed the offence under section 420 IPC.

4. Heard the learned counsel for the petitioners and the learned Public Prosecutor. The defacto complainant also appeared through a counsel. I heard the counsel for the defacto complainant also.

5. The learned counsel for the petitioners submitted that, even if the entire allegations are accepted, no offence under Section 420 IPC is made out.

The counsel submitted that he has not issued any cheque to the defacto complainant in this case. The petitioners also filed complaint before the police and the police is not acting based on that complaint. The counsel submitted that the petitioners are ready to abide any conditions in this Court grant them bail.

6. The learned counsel for the defacto complainant seriously opposed the bail application. The counsel submitted that it is clear case of cheating. The counsel submitted that the petitioners issued a cheque towards the liability and when the cheque was presented, it was dishonoured with an endorsement 'signature differs'. From the action of the petitioners, it is clear that, there is element of cheating. The counsel submitted that the petitioners may not be released on bail invoking the powers under Section 420 Cr.P.C. The learned counsel also submitted that, the entire case is clearly stated in the private complaint and based on the same, the case is registered.

7. The learned Public Prosecutor also opposed the bail application. Public Prosecutor submitted that the custodial interrogation of the petitioners is necessary.

8. After hearing both sides, I think this Bail Application can be allowed on stringent conditions. The case is registered based on a private complaint filed before the Magistrate Court, which was forwarded under Section 156(3) Cr.P.C. The allegation in the complaint is that a cheque was issued by the petitioners to the defacto complainant towards the liability and when the cheque was presented before the Bank, the same was returned with an endorsement 'signature differs'. I do not want make any observation about the merits of the case. Whether the offence under Section 420 is made out in such situation, it is a matter to be investigated by the investigating officer. But, the custodial interrogation of the petitioners may not be necessary in such cases. Considering the entire facts and circumstances of this case, I think this Bail Application can be allowed on stringent conditions.

9. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the

Hon'ble Supreme Court in Re: Contagion of COVID-19 Virus In Prisons case (Suo

Motu Writ Petition(C) No.1 of 2020) and a Full Bench of this

Court in W.P(C)No.9400 of 2020 issued various salutary directions for minimizing the number of inmates inside prisons.

10. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in *Chidambaram. P v*

Directorate of Enforcement (2019 (16) SCALE 870), after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail

remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing

fair trial.

11. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed

with the following directions:

1. The petitioners shall appear before the Investigating Officer within ten days from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose to arrest the petitioners, they shall be released on bail executing a bond for a sum of

Rs.,50,000/-(Rupees Fifty Thousand only) each with two solvent sureties each for the like sum to the satisfaction of the officer concerned.

3. The petitioners shall appear before the Investigating Officer for interrogation as and when required. The petitioners shall co-operate with the

investigation and shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to

dissuade them from disclosing such facts to the Court or to any police officer.

4. Petitioners shall not leave India without permission of the Court.

5. Petitioners shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are

suspected.

6. The petitioners shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of

social distancing in the wake of Covid 19 pandemic.

7. Petitioners shall surrender their passports before the Investigating Officer. If there is no passport, they will file an affidavit to that effect before the

Investigating officer.

8. Petitioners shall appear before the Investigating Officer on all Mondays at 10.a.m. for a period of two months.

9. If any of the above conditions are violated by the petitioners, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court.