

(2012) 08 KL CK 0050

In the High Court Of Kerala

Case No : Bail Application No. 4080 of 2012

Dr. Harish BABU Maddineni Flat No. 108 Creative Sneha
Apartments, Botanical Gardens, Kondapur, Hyderabad,
Andhra Pradesh

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 57
Penal Code, 1860 (IPC) — Section 34, 406, 418, 420
Prize Chits and Money Circulation Schemes Banning Act, 1978 — Section 6

Citation : (2012) 08 KL CK 0050

Hon'ble Judges : N.K. Balakrishnan, J

Bench : Single Bench

**Advocate : Rajit, for the Appellant; K.I. Abdul Rasheed, Addl. Director General
of Prosecution and Sri. S. Suresh for Public Prosecutor, for the Respondent**

Final Decision : Dismissed

Judgement

N.K. Balakrishnan, J.—All these bail applications are filed by the very same accused in Crime No: 1592/2011 of Thrissur Town West Police Station and other crimes, made mention of in the 38 other applications for bail. The offences alleged against the accused are under sections 406, 418 and 420 r/w 34 of IPC and section 6 of Prize Chits and Money Circulation Scheme (Banning) Act, 1978, (hereinafter referred to as "1978 Act" for short). This petitioner had filed application for bail on earlier occasions also in the connected crimes. The facts of the case as have been stated in earlier Bail Application No. 8135/2011 and connected cases are quoted hereunder since the main allegation is the same.

The petitioner started a Company, namely, Nano Excel Enterprises Private Limited and it was registered at Hyderabad on 12.07.2007. In January 2010, the petitioner started another company under the name and style Nano Excel Power Corporation Limited. On 26.02.2010, the name of the company was changed as Nano Excel Corporation Limited. The accused collected crores of rupees from the

general public under the guise of marketing products and also under the guise of providing shares in an alleged 100 MV Power Plant at Arunachal Pradesh. Wide publicity was given through media and otherwise by the petitioner that the Nano Excel Power Corporation had entered into an agreement with the Government of Arunachal Pradesh for establishing a 100 MV Power Plant at Arunachal Pradesh. Believing the promises given by the accused, hundreds of persons took shares in the Power Project. It is also alleged that under the guise of marketing nano products, the accused collected crores of rupees from the general public after supplying poor quality and low cost products at high rates. Even according to the statement given by the petitioner to the Crime Branch, he had collected Rs. 347 crores from the general public. The customers deposited crores of rupees at the Thrissur office of the Company. Products alleged to be nano products are available in open market. At the inception, the Company started a package of Rs. 4,000/- for their products. Later, the face value of the package was increased to Rupees five thousand, then to six thousand and lastly to Rupees twelve thousand. The modus operandi was that if a person deposited money, the company would give him an ID number and he would be a distributor. Only a distributor who holds ID number could purchase products from the company. The distributor would get commission if he enrolls new members. Huge amounts were being paid to the so called distributors. The accused offered a return of Rs. 1,30,000/- in a week to a person who deposited Rs. 12,000/-, apart from the royalty income of Rs. 1,80,000/-. The activities in which the accused indulged themselves was a money circulation scheme under the guise of selling poor quality and low cost products, with an intent to make quick and easy money. False representations were made to the public in order to collect huge amounts and thus the accused cheated the public.

2. The main thrust of the argument advanced by Sri. Rajit, learned Counsel for the petitioner, is that in all the aforesaid cases the Investigating Officer sought permission of the learned Magistrate to record formal arrest of the accused and after getting permission the petitioner was formally arrested in 23 cases on 1.6.2012. In the remaining 12 cases, the date of formal arrest is shown as 28.04.2012. In the first set of 23 cases, the Investigating Officer filed application for production warrant on 02.06.2012. It is argued by Sri. Rajit, learned Counsel for the petitioner, that though in those 23 cases, where the date of formal arrest was 01.06.2012 and the application for production warrant was submitted on 02.06.2012 itself, the accused was produced before the learned Magistrate only on 12.06.2012. In another set of 12 cases, though the date of formal arrest was 28.04.2012 and the application for production warrant was submitted on 30.04.2012, the accused was, in fact, produced before the learned Magistrate only on 04.06.2012. Sri. Rajit would submit that despite the petitioner's arrest having been formally recorded on the dates mentioned above, the Investigating Officer has not chosen to produce the petitioner before Court on the next day or atleast within a reasonable time but the Investigating Officer has misused the provision by not producing the accused before the learned Magistrate within a

reasonable time and so the indefeasible right of the accused to get released on bail, invoking the provision u/s 167(2) of Cr. P.C., has been defeated by the delay in production of the accused before Court.

3. The learned Additional Director General of Prosecution submits that there was no fault on the part of the Investigating Officer in filing the application for production warrant since in all the 23 cases, the date of formal arrest was 01.06.2012 and application for production warrant was submitted on 02.06.2012, itself. In all these cases the accused were produced before the learned Magistrate on 12.06.2012. The fact that the petitioner is involved in hundreds of cases and that as he is in judicial custody, he had to be produced before several Courts in obedience to the production warrants issued by those Courts, also has to be borne in mind, considering the peculiar circumstance of the case, the learned A.D.G.P. submits. It is further submitted that since the petitioner had to be produced before so many Courts situated in different parts of Kerala, it was practically not possible to produce the accused before the learned Magistrate within a reasonable time and so there was no deliberate laches or shortcomings on the part of the Investigating Officer in not producing the accused before the Court within a reasonable time from the date of formal arrest of the accused. It is further submitted that these contentions were advanced by the petitioner before this Court and these contentions were considered and repelled by this Court in the two reported decisions: Harish Babu Maddineni V. State of Kerala 2011 (4) KLT 637 and Harish Babu Maddineni V. State of Kerala 2012 (1) KLT 235.

4. The learned Counsel for the petitioner submits that the main ground that was canvassed by the petitioner in those cases was that the statutory period for obtaining bail u/s 167(2) of Cr. P.C. should commence from the date of "formal arrest", since in those cases the accused was produced before the Magistrate several days after the formal arrest. But that contention was negated by this Court since the period prescribed u/s 167(2) of Cr. P.C. commences only from the date of production of the accused and not from the date of arrest of the accused. It is further submitted that the question as to whether the Investigating Officer can submit an application for production warrant leisurely at his whim and fancy was not the point that was advanced by the petitioner in the earlier cases. Therefore, the learned Counsel submits that so far as these applications are concerned, the crucial point that arises for consideration is whether the police officer can leisurely produce the accused, whose formal arrest had been recorded several days prior to the date of production in Court. The learned Counsel submits that as per section 57 of Cr. P.C. the person arrested has to be produced before the Magistrate within twenty four hours excluding the time necessary for journey from the place of arrest to the Magistrate's Court. Therefore, according to Mr. Rajit, the accused should have been produced before the Court on the next day or at least within two or three days. The learned A.D.G.P. would submit that section 57 starts with the words "no police officer shall detain in custody a person arrested", to mean that the arrested person shall not be detained in

police custody whereas in all these cases the accused was not in police custody. Though the formal arrest was recorded, the accused continued to be in judicial custody as per the Order of the Court passed in other crimes and therefore, no right of the accused was defeated in these cases, it is further argued. But Sri. Rajit would submit that if such an interpretation is given then it would be giving an unbridled discretion to the Investigating Officer to submit his application for production warrant leisurely to achieve his object of detaining the accused for an unduly long period. Therefore, even if section 57 as such may not be applicable, the principle that the arrested person should be produced before the Magistrate within a reasonable time is so explicit in that provision. Therefore, there can be no doubt that if a formal arrest is recorded by the Investigating Officer, then he must submit an application within the shortest possible period to the learned Magistrate having jurisdiction to cause production of the accused by issuing a warrant and to order remand of the accused to the judicial custody.

5. The learned Counsel has also drawn the attention of the Court to Form No. 7 of Criminal Rules of Practice which is prescribed in section 167 of Cr. P.C. bearing in mind the principles contained in section 57 of Cr. P.C. Form No. 7 is as follows:

FORM No. 7 Order for the detention in custody of an accused person

(Section 167, Criminal Procedure Code)

To

... Whereas it appears that a charge against the..... of an offence under Section..... of the Indian Penal Code/Act No. ...of is under investigation by the Police under the provisions of Chapter XII of the Code of Criminal Procedure, that such investigation cannot be completed within the period of 24 hours fixed by Section 57 of the said Code; and that there are grounds for believing that accusation/information against the said person is well-founded; and the accused having been duly forwarded to this Court, this is to authorise you to detain the said..... in custody for..... days and to cause him to be produced before..... Court sitting at..... on the.... day of.... 19... at..... O'clock.

Given under my hand and the seal of the Court, this.... day of..... 19.....

(Seal)

Magistrate

6. According to the learned Counsel even if only formal arrest (for a subsequent crime) was recorded of an accused who is in remand in other crimes still the remand order can be issued only as provided in Form No. 7 referred to earlier and so it does not make any difference whether the accused was formally arrested and was in judicial custody in connection with the other cases or whether the accused was arrested and detained in police custody. There can be no doubt that if the accused is formally arrested and detained in police station, the accused has to be produced before the learned Magistrate within a period of

24 hours or at least within a reasonable time. If the accused is in jail at a far away place or that it is not feasible to direct production of the accused within one or two days for valid reasons the position may be slightly different.

7. The learned Counsel for the petitioner has relied upon the decision of the apex Court in *Manoj Vs. State of Madhya Pradesh*, in support of his submission that it is a constitutional mandate that no person shall be deprived of his liberty except in accordance with the procedure established by law and that a person arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours of such arrest. But the learned Public Prosecutor would submit that if the accused is not produced before the Magistrate and remanded in a particular case then he cannot be detained once he is granted bail in other crimes. Therefore, usually the accused would be produced before the Magistrate immediately after formal arrest was recorded. It is further submitted that in the aforesaid cases also the Investigating Officer did his duty by filing applications for issuance of production warrant within two days of the date of formal arrest. It seems, there was delay in despatch of the production warrant in those cases.

8. It is not in dispute that the petitioner is involved in about five hundred cases. The learned A.D.G.P. submits that new crimes are also registered based on the complaints given by other persons who were also similarly cheated by the accused. Since these are applications for bail, whether "Nano Technology" products of the accused are actually feasible or workable or whether there is any element of cheating in it, are matters not necessary to be dealt with in detail. It is submitted by the learned A.D.G.P. that in almost all the complaints so far filed against the petitioner, in regard to which crimes were registered, there was an element of cheating so as to attract offence u/s 420 of I.P.C. and also to attract the penal provision of the "1978 Act". Be that as it may, the point to be considered in these cases is whether it is possible for the Investigating Officer to leisurely produce the accused though formal arrest had been recorded several days prior to the date of production. But in this connection, the learned A.D.G.P. submits that the Investigating Officer cannot be found fault with since in all these cases the application for production warrant was submitted on the next day or at least on the second day of the date of formal arrest. Since the petitioner is the accused in about five hundred cases, the practical difficulty experienced by the Investigating Officer in submitting such applications for production warrant in several such cases cannot be ignored or lost sight of and as such there is nothing to show that the Investigating Officer has deliberately done anything to defeat the right of the petitioner.

9. Sri. Rajit, learned Counsel for the petitioner, further submits that even if it is accepted that the application for production warrant was submitted on the next day or within two days, the fact remains that the accused was produced in some of the cases more than one month thereafter. So the argument that has been advanced is that, had the accused been produced before the Magistrate within a reasonable time from the date of formal arrest, at least within two or three days

of the date of issuance of production warrant, then the accused could have computed the period of detention for the purpose for getting the benefit of section 167(2) of Cr. P.C. from the date of such production before the Magistrate so that the petitioner could have availed of the benefits u/s 167(2) of Cr. P.C., but that has been unjustly denied because of the delay in production of the accused; whether it was on account of the laches on the part of the Investigating Officer or on the part of the Court.

10. So far as some of the bail applications are concerned, it would be possible for the petitioner to obtain bail u/s 167(2) of Cr. P.C. after one or two days since the period of 60 days would expire by that time. In some of the other cases the accused were produced before the learned Magistrate on 6.6.2012. In those cases also it would be possible for the petitioner to get release within two days thereafter. The learned Counsel for the petitioner submits that the petitioner is likely to be arrested in connection with other crimes which have been registered against the petitioner. As has been said earlier, about 500 crimes have been registered so far. So many other persons are also intending to file similar complaints, it is contended. The apprehension expressed by the learned Counsel for the petitioner is that if issuance of the production warrant and the actual production of the accused before the Magistrate is unreasonably delayed, then that would defeat the right of the accused to get bail u/s 167(2) of Cr. P.C.

11. Since the aforesaid crimes were the subject matter of the earlier bail applications and since in these cases the accused were produced on the dates as mentioned earlier and because the petitioner would be able to get statutory bail in all those cases within a few days, I find no reason to make any observation or direction regarding those cases. But at the same time it would be just and proper that the learned Magistrate is given certain directions.

12. When application for production warrant is submitted before court, such production warrant shall be issued without unnecessary delay. When production warrants are issued the Superintendent of jail should be directed to produce the accused on a specified day which may be a day within two or three days of the issuance of the warrant; but if there are other compelling reasons which preclude the Superintendent of jail to produce the accused on the date specified, it is the duty of the Superintendent of jail to submit a report before the learned Magistrate explaining the reasons for the non production of the accused. It should not be left to the sweet will and pleasure of the jail authorities or the investigating officer. Once production warrant is issued showing the specific date on which the accused should be produced, it is the duty of the Superintendent of the jail to produce the accused or to submit a report before court, if the Superintendent of jail finds it unable to produce the accused because of any compelling or unavoidable reasons or which is beyond his control. If the accused is not produced or order of remand is not made in each of the cases and if the accused is granted bail in other cases, then the accused cannot be detained in custody simply for the reason that arrest of the accused was formally recorded

by the Investigating Officer. It is to obviate that difficulty also, the production of the accused before the Magistrate at the earliest is necessary.

13. It is pointed out that now in some of the jails and some of the district centers video conferencing facility is available and if so there would be no difficulty to order remand of the accused, who is lodged in jail, to order remand of the accused to judicial custody making use of the video conferencing facility. Therefore, to the maximum possible that facility should be made use of by the learned Magistrates so that complaint of delay in production of the accused before Court can be avoided to a great extent. In the light of what has been stated above, the request for bail, made in these petitions, is rejected but with the observations made above.