**(2021) 03 KL CK 0013**

**In the High Court Of Kerala**

**Case No :** Bail Application No. 7372 Of 2020

Jose Peter Felix APPELLANT

Vs

State Of Kerala And Ors RESPONDENT

**Date of Decision :** 01-03-2021

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 41(A), 438
Indian Penal Code, 1860 — Section 34, 468, 471

**Citation :** (2021) 03 KL CK 0013

**Hon'ble Judges :** Ashok Menon, J

**Bench :** Single Bench

**Advocate :** P. Fazil, K.R. Sunil

**Final Decision :** Allowed

## Judgement

1. Application filed under Section 438 of Cr.P.C for anticipatory bail.

2. The applicant the apprehends arrest in Crime No. 1/CB/IDK/R of 2020 of Crime Branch CID, Idukki for having allegedly committed offences

punishable under Sections 468 and 471 read with Section 34 of the I.P.C.

3. The prosecution case, in brief, is that the applicant is the 4th accused in the aforesaid crime, which was originally registered as Crime No. 714/2019

of Central Police Station, Ernakulam. It is alleged that the applicant in furtherance of common intention with the rest of the accused allegedly executed

a forged document purporting to be a â??transfer of possession rightsâ? of property belonging to the de facto complainant, 3rd respondent, situated in

Vattavada Village near Munnar in favour of Rajeev Vishnudas Aswani on 05/01/2009. The applicant received a notice under Section 41A of the

Cr.P.C (Annexure 1) from the 2nd respondent, Deputy Police Superintendent, Crime Branch, on 17/02/2020. No provision of law was mentioned in that notice. However, the applicant appeared before the 2nd respondent. He was asked whether he had signed as a witness in a document executed

by Sangeeth Kumar, the de facto complainant in favour of his employer Rajeev. The applicant admitted that he had signed as a witness in a document

executed by Sangeeth in favour of Rajeev as a witness before the Sub Registrar, Devikulam. The statements of the applicant and his employer Rajeev

were recorded by 2nd respondent. Annexure 2 is the copy of that document he had signed as witness. There was some dispute with regard to

property purchased by the mother of Rajeev from the aforesaid Sangeeth during 2011. Two crimes were registered as Crime Nos.270 and 271 of

2012 before the Devikulam Police Station. The applicant, as also his employer Rajeev, were not accused in the aforesaid crimes. It is understood that

both those crimes have been referred by the Police after investigation. The said issue was also subject matter in O.S.No.365/2013 on the files of the

Munsiff-Magistrate Court, Devikulam. Rajeev's mother Asha Vishnudas Aswani was the 2nd defendant in that Suit. That suit was also dismissed. On

27/10/2020, the applicant has received another notice under Section 41A of the Cr.P.C from the 2nd respondent (Annexure 3) directing him to appear

in the aforesaid crime, stating offences punishable under Sections 468 and 471 read with Section 34 of the I.P.C.

4. The applicant states that he is innocent and has no connection with any forgery or concoction of document. He is employed as a driver of the

aforesaid Rajeev Vishnudas. The applicant had earlier appeared before the 2nd respondent and disclosed about everything he knew with regard to the

execution of the document. The applicant has no knowledge about the contention of the document at Annexure 2. The dispute is between, Sangeeth

the executor of the document and the applicant's employer Rajeev. The applicant is a law-abiding citizen and is not fleeing from justice. He is willing

to co-operate with the investigation and has also appeared before the 2nd respondent and he has nothing more to state. No documents are in the

possession of the applicant and there is nothing to be recovered from him by subjecting him to custodial interrogation, and therefore, he seeks pre-

arrest bail.

5. The de facto complainant got himself impleaded as additional 3rd respondent, and he has filed a petition stating that this crime is connected with

 

Crime Nos.270/2012 and 271/2012 of Devikulam Police Station, which is also being investigated by the C.B.C.I.D. as per order of this Court in O.P.

(Crl) Nos.341 and 351 of 2015 dated 28/01/2016 at Annexure R3(d). The de facto complainant also had approached this Court by filing W.P.(C)

No.5923/2019 for investigating his complaint registered as Crime No.741/2019 of Central Police Station, Ernakulam together with Crime Nos.270 and

271 of 2012 of Devikulam Police Station. The said Writ Petition was allowed by the judgment dated 11/04/2019 at Annexure-R3(h). Annexure 2

document purporting to be a transfer of possession rights executed by the 3rd respondent is forged and concocted. The said document states that his

property having an extent of 53.50 Ares in survey No. 182/13, 15.30 Ares in survey No. 182/11 and 121.40 Ares of land in survey No. 184/12 in

Vattavada Village was conveyed/transferred to Rajeev Vishnudas for a consideration of ☐ 35,25,000/-. The 3rd respondent states that he has not

received any consideration for their property and neither has he handed over possession. In fact, the 3rd accused namely Tomy Joseph had

approached the 3rd respondent claiming to be a real estate developer and broker and stated that Rajeev Vishnudas is interested in purchasing property

having an extent of 8.76 acres belonging to the applicant in Vattavada village and all the documents pertaining to the property was handed over to the

lawyer of Rajeev Vishnudas and it was agreed that the property would be purchased by him for a sale consideration of ☐ 66 lakhs. The broker Tomy

Joseph received the entire sale consideration but transferred only ☐ 25 lakhs to the account of the 3rd respondent. The balance is still due from him.

Sale deed with regard to that property was executed by the 3rd respondent, his sister and brother-in-law. Tomy Joseph evaded payment of the

balance sale consideration stating one reason or another. It is understood that the aforesaid Tomy Joseph impersonated as one Chellaiyya Thevar and

executed a sale deed in favour of his wife Reji Tomy in the year 2010 and thereafter the said Reji Tomy executed a sale deed in favour of Asha

Vishnudas, the mother of Rajeev Vishnudas. On the basis of the complaint filed by the 3rd respondent before the Judicial First Class Magistrate Court

Devikulam, Crime No.271/2012 was registered. Chellaiyya Thevar, who was already dead in the year 2010, could not have executed the sale deed in

favour of Reji Tomy. Chellaiyya Thevar's son Sentoor Pandiyan had also filed a complaint stating that his father's property has been grabbed and consequently, Crime No.270/2012 was registered. It was the aforesaid Sentoor Pandiyan who filed O.P.(Crl) Nos. 341 and 351 of 2015, and obtained

Annexure R3(d) judgment handing over the investigation to C.B.C.I.D. It is true that, Crime No.271/2012 has been referred and 3rd respondent has

received notice from the Judicial First Class Magistrate Court. He intends to file a protest complaint. It is stated that the applicant may not be granted

anticipatory bail as the concocted document was forged with his active participation and knowledge.

6. Heard the learned Counsel appearing for the applicant and the learned Counsel appearing for the de facto complainant, 3rd respondent. The learned

Public Prosecutor was also heard. Records perused.

7. The Hon'ble Supreme Court in Gurbaksh Singh Sibbia and another v. State of Punjab [1980 KHC 665 : (1980) 2 SCC 565] laid down the following

principles regard to anticipatory bail:

a) S.438(1) is to be interpreted in light of Art.21 of the Constitution of India.

b) Filing of FIR is not a condition precedent to exercise of power under S.438.

c) Order under S.438 would not affect the right of police to conduct investigation.

d) Conditions mentioned in S.437 cannot be read into S.438.

e) Although the power to release on anticipatory bail can be described as of an ""extraordinary"" character this would ""not justify the conclusion that the

power must be exercised in exceptional cases only."" Powers are discretionary to be exercised in the light of the circumstances of each case.

f) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re-

examined after hearing. Such ad interim order must conform to requirements of the section and suitable conditions should be imposed on the applicant.

In Siddharam Satlingappa Mhetre v. State of Maharashtra and Others [2010 KHC 4952 : (2011) 1 SCC 694], it was held thus:-

â??122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role

of the accused in the case. The cases in which accused is implicated with the help of S.34 and S.149 of the Indian Penal Code, the court should

consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused

to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. 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.â??

8. The applicant is the 4th accused in this crime. His role is limited to execute the disputed document as a witness. There is no indication that he has

wrongfully gained by execution of the document. The document was allegedly executed in favour of Rajeev Vishnudas. It is he who got the property.

The 3rd accused Tomy is supposed to be a broker and probably, he also may have wrongfully gained because of the alleged act of forgery. The

allegedly forged document is within the reach of the investigating officer and he has the authority to subject the document to export opinion regarding

the signature subscribed by the executant of the document. The applicant is not in possession of any documents which needs to be recovered from him. The fact that he had appeared before the investigating officer in response to the first notice that he received indicates that he is willing to co-

operate with the investigation. There is no possibility of his fleeing from justice. There is nothing to be tampered with. There are no witnesses to be

influenced. Under the circumstances, I find that it is not necessary to subject the applicant to custodial interrogation. He is not involved in any large-

scale fraud. He has no criminal antecedents. Applying the decisions of the Apex Court to the facts and circumstances of this case, I find no reason to

decline granting of anticipatory bail to the applicant.

As a result, the application is allowed and the applicant is directed to surrender before the investigating officer within a period of two weeks. In the

event of his arrest, after interrogation, he shall be released on bail on execution of bond for ☐ 1,00,000/- (Rupees one lakh only) with two solvent

sureties for like amount each to the satisfaction of the arresting officer and on following conditions:

i) He shall appear before the investigating officer as and when called for and cooperate with the investigation;

ii) He shall not get involved in any crime of similar nature during the bail period;

iii) He shall not tamper with evidence, influence or intimidate witnesses.

In the event of breach of the above conditions, the prosecution shall be at liberty to approach the jurisdictional Court for cancellation of the bail.