

(2023) 05 KL CK 0030

In the High Court Of Kerala

Case No : Bail Application No. 2444 Of 2023

Kadavantakath Padiyil Muhamed Ali

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 05-05-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 406, 420

Citation : (2023) 05 KL CK 0030

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

Bench : Single Bench

Advocate : Daisy A.Philipose, Jai George, Nima Jacob, .Baiju Noel, T.S.Likhitha, Shinto Sabastian

Final Decision : Allowed

Judgement

P.V.Kunhikrishnan, J

1. This Bail Application filed under Section 438 of Criminal Procedure Code (Cr.P.C.).
2. Petitioners are the accused in Crime No.201/2023 of Pazhayangadi Police Station. The above case is registered against the petitioners alleging offences punishable under Secs. 406 and 420 IPC.
3. The prosecution case is that on 27.12.2013, the petitioners received an amount of Rs.20,00,000/- directly by cash and through account from the defacto complainant by making him believe that they will add him as the partner of the Limited Liability partnership firm as "Mali Builders and Developers" constituted by the petitioners and that the share of the profit would be provided to him and they did not either make the defacto complainant as partner of the said form nor provided any share of profit to him and thereby committed the offences.
4. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

5. The counsel for the petitioners submitted that this Court as per order dated 20.04.2023 in BA No. 2413 of 2023 granted bail in a similar set of allegations. The counsel submitted that no criminal offence is made out against the petitioners. The Public Prosecutor opposed the bail application.

6. This Court considered the contentions of the petitioners and the Public Prosecutor. This Court released the petitioners on bail in Crime No. 296/2023 of Hosdurg Police Station as per order dated 20.04.2023 in BA No. 2413/2023. The same set of facts are there in this case also. In such circumstances, I think the petitioners can be released on bail in this case also.

7. 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.

8. 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. Petitioners shall appear before the Investigating Officer within ten days from today and shall undergo interrogation;

2. After interrogation, if the Investigating Officer proposes to arrest the petitioners, they shall be released on bail on 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. 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 jurisdictional 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. 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.