(2021) 12 KL CK 0044

In the High Court Of Kerala

Case No : Bail Appl. No. 9158 Of 2021

Muhammed Aslam. A.M @ Aslam S/o Madarasa Ravuthar APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 06-12-2021

Acts Referred:
Indian Penal Code, 1860 — Section 34, 201, 406, 409, 420, 465, 468, 471

Citation : (2021) 12 KL CK 0044

Hon'ble Judges : Shircy V, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shircy V, J

1. The petitioner, who is arraigned as the 9th accused in Crime No.254/CB/TSR/D/2021 (Crime No.650/2021 of Irinjalakuda police station) registered for the offences punishable under Sections 406, 420, 409, 465, 468, 471, 201 read with Section 34 of the Indian Penal Code has moved this application for his release on bail.

2. The petitioner has been in custody since 11.10.2021.

3. The gravamen of the prosecution case is as follows: This petitioner is a member of the Board of Directors of the Karuvannur Service Co-operative Bank (for short 'the Bank'). The 1st accused was the former Secretary of the Bank. The 2nd accused was the Manager and the 3rd accused, the Accountant. The 6th accused was the former accountant of the supermarket run by the Bank. The 5th accused was the commission agent of RUBCO for the Bank and the 4th accused a 'C' class member. The 7th accused was the President and accused Nos. 8 to 18 were the members of the Director Board during the period from 2016 to 22.07.2021. The accused Nos.7 to 18 colluded with accused Nos. 1 to 6 with the dishonest intention to cheat the Bank as well its depositors deliberately violating the provisions prescribed in the Kerala Co-operative Societies Act and Rules and

the provisions of the bye-law of the Bank and committed forgery and misappropriated and siphoned off huge amount of the Bank. They have created fake membership form and granted more than one loan to the same person upon the mortgage of a single property lying beyond the jurisdiction of the Bank showing highly inflated market value. Properties already mortgaged with other financial institutions and even properties under attachment were taken into consideration with the intention to create fake loans to misappropriate the money. They also illegally released the mortgage of the properties before settlement of the loans violating the rules for unlawful gain. The accused have fraudulently with the intention to deceive the Bank as well as the depositors using forged documents, created fresh mortgages offering the very same properties as security, without the knowledge of the actual owners of the property who availed genuine loan from the Bank and thus misappropriated the money and cheated them. The 4th accused who is not even residing within the limits of the Bank, was allotted C class membership and 52 fake loans were granted to him and to persons in acquaintance with him without their knowledge to the tune of Rs.22.85 crores and his liability to the Bank alone as revealed, is approximately Rs. 33,28,62,817/-. Forged documents were created and huge amount was availed as loan after colluding with each other and thus committed grave malpractice and siphoned off money into their accounts and used for their personal business. The accounts pertaining to the supermarket had also been fabricated with the intention to misappropriate money. They fraudulently created documents regarding the distribution of RUBCO products, monthly deposit scheme, auction process of kuri, purchase of stocks to the super market etc. for unlawful gain and caused disappearance of evidence and thus misappropriated huge funds of the Bank. Thus by committing criminal breach of trust, cheating and forgery they have gained pecuniary advantage of approximately 100 crores and caused corresponding monetary loss to the bank and its genuine customers.

4. The learned counsel for the petitioner has contended that the petitioner is a member of the Director Board of the bank and though he is innocent he is falsely implicated subsequently due to political pressure. The actual misappropriations were done by the accused Nos.1 to 6. An enquiry was conducted by the Unit Inspector, Assistant Registrar General (Co-operative Department), Irinjalakuda regarding the loan transaction and on the basis of the recommendation the Board of Directors formed a disciplinary committee and an enquiry was conducted and accused Nos.1 to 3 were suspended at the instance of the Board of Directors and decided to initiate criminal proceedings. The loans were sanctioned without the recommendation of the Director Board members and the entire malpractice was committed by the accused Nos.1 to 6 without the knowledge of the Board of Directors. It is further submitted that he is a senior citizen suffering from various ailments. But he is languishing in jail for no valid reason. Therefore, this application for his release on bail.

5. The learned ADGP strenuously opposed the application contending that the director board had approved the applications submitted for 279 loans violating all

the norms and a detailed investigation is required as huge amount is involved in this scam. As the involvement of this petitioner has emerged upon investigation if the bail application is allowed, the investigation could not be proceeded with smoothly and effectively.

6. At the outset it is required to be noted that this bank is governed by a bye-law. As this is a Co-operative Society the provisions of the Co-operative Societies Act and Rule are also applicable for the management of the Bank. The offences are alleged to have been committed by persons in charge of the Bank and responsible for the conduct of business of the Bank. Prima facie it is revealed that the board of directors have to act only as per the bye-law. The jurisdiction of the bank extends only to Porathissery, Madayikonam and Irinjalakuda villages. Membership will be given as per clause 5(a) only to those who are permanently residing there or regular employees within that area. The 4th accused who is only a 'C' class member and not at all a resident within the jurisdiction of the bank had illegally availed huge amount as loan with the connivance of the officials and the board of directors. It is also prima facie revealed that the documents mortgaged by the depositors/members of the bank were used by him to avail more loans by offering those properties already mortgaged by creating documents fraudulently without the knowledge of the original property owners.

7. Huge amount of money has been siphoned off by the 4th accused with the connivance of the board of directors and the liability of the 4th accused who is not even a resident within the jurisdiction of the bank alone, is approximately Rs.33,82,62,817/-. Doubtless that the nature and gravity of the accusation leveled against the petitioner is very serious and grave. Prima facie it is revealed that this petitioner, a member of board of directors has colluded with the other accused to commit forgery, manipulation of accounts and to cheat the Bank for wrongful gain. Since huge amount is involved in this scam the investigating agency require time to unearth all the details involved in the case. Scientific examination with the help of technical experts is also required to ascertain the real gravity of the offence alleged against this petitioner as well the other accused.

8. But, this petitioner has been in custody for the last 2 months. He is a senior citizen and is suffering from hypercholesterolemia, diabetes Mellitus and Glaucoma. Therefore, taking into account of his health condition, I am inclined to release him on bail subject to the following conditions:

(i) The petitioner shall be released on bail on his executing bond for a sum of Rs.5,00,000/- (Rupees five lakhs only) with two solvent sureties for the like sum each to the satisfaction of the court having jurisdiction.

(ii) The petitioner shall deposit a sum of Rs.2,00,000/-before the Jurisdictional Court within two weeks of his release.

(iii) The petitioner shall appear before the Investigating Officer for interrogation as and when required by him, in writing, till filing of the final report.

(iv) The petitioner shall not leave the state of Kerala without prior permission of the jurisdictional court.

(v) The petitioner shall not enter into Karuvannur service Co- operative Bank or in the supermarket run by the bank and in the branches, if any.

(vi) The petitioner shall surrender his original passport before the court concerned. If he is not holding a passport, he shall file an affidavit regarding the same before the court, within a week of his release on bail.

(vii) The petitioner 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 him from disclosing such facts to the court or to any police officer or tamper with the evidence.

(viii) The petitioner shall not commit any offence while on bail.

In case of violation of any of the above conditions, the Jurisdictional Court is at liberty to cancel the bail in accordance with the law.