(2021) 12 KL CK 0010

In the High Court Of Kerala

Case No : Bail Appl. No. 9001 Of 2021

Reji Joseph @ Amrutham Reji — APPELLANT

Vs

State Of Kerala — RESPONDENT

Date of Decision : 01-12-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 420, 465, 471
Negotiable Instruments Act, 1881 — Section 138

Citation : (2021) 12 KL CK 0010

Hon'ble Judges : Shircy V, J

Bench : Single Bench

Advocate : P.Sanjay, A.Parvathi Menon, Gisa Susan Thomas, Noushad.K.A

Final Decision : Dismissed

Judgement

Shircy V, J

1. Application for regular bail filed under Section 439 of the Code of Criminal Procedure.

2. The petitioner is the 1st accused in Crime No.128 of 2021 of Pothukal Police Station registered for the offences punishable under Sections 420,465,471 read with Section 34 of the Indian Penal Code.

3. He has been in custody since 13.11.2021.

4. The prosecution case in brief is as follow:

The defacto complainant is a NRI. Accidentally he came in contact with the petitioner. Then the petitioner realized that the defacto complainant had an intention to start jewelry shop. So with the dishonest intention he along with his wife induced the defacto complainant to part with a sum of Rs.1,50,00,000/- under the false promise that they would provide gold ornaments to him to start his jewelry business. But after receipt of the same, they handed over some gold ornaments as well a machinery to run the jewelry shop. They also forged certain documents so as to convince the defacto complainant that they are wholesale dealers of gold. But they failed to hand over the balance gold and thereby cheated the defacto complainant and misappropriated the balance amount of Rs. Rs.1,37,11,600/-. Thereby the accused have committed the aforesaid offences.

5. Heard the learned counsel for the petitioner as well the learned Public Prosecutor.

6. The learned counsel for the petitioner would submit that he is a person having high reputation in Coimbatore and he is conducting gold business and in fact the defacto complainant contacted him with a proposal to start the gold business. In fact he along with his wife is running gold business under the name and style "AGI Pearl and Diamond (Pvt.) Ltd" in Coimbatore and his intention was to give the gold to enable the defacto complainant to start business in Kerala. But he could not provide the entire gold as promised as he had another transaction with another person for Rs.2 crores. So he could not comply with the terms and conditions he had with the defacto complainant. By the time this case has been registered against him. In fact he is totally innocent.

7. The learned Public Prosecutor refuted the contention raised by the learned counsel for the petitioner highlighting his criminal antecedents.

8. Though it is pointed out by the learned Public Prosecutor that he is involved in 4 other cases, out of which Crime No.406/2012 had already been quashed by this Court and in Crime No.1704/2014 he is the injured and his wife is the defacto complainant. Crime No.915/2014 which is pending as C.C.No.920/2015 has been stayed by this Court. So only Crime No.133 of 1991 is pending apart from the case before the Chief Judicial Magistrate Court under Section 138 of NI Act.

9. Annexure A4 and A5 would prima facie reveals that he is engaged with the business of gold at Coimbatore and he is also running some other business in connection with Ayurvedic medicines.

10. Now the investigation of the case is well in progress. Though his wife is also an accused in this case, as per the order dated 18.11.2021 there is an interim direction that the coercive steps shall not be taken against his wife till 25.11.2021, which stands extended.

Considering the entire facts involved in this case, I think that further detention of this petitioner may not be required for the investigating agency to proceed with the investigation. Therefore, taking into account of the present stage of investigation and the period of detention undergone by him, this application for bail is allowed subject to the following conditions.

(i) The petitioner shall be released on bail on his executing bond for a sum of Rs.2,00,000/- (Rupees two lakhs only) with two solvent sureties for the like sum each to the satisfaction of the court having jurisdiction.

(ii) The petitioner shall surrender his original passport before the court concerned. If he is not having a passport, he shall file an affidavit regarding the same before the court, within a period of 10 days of his release.

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

(iii) 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.

(iv) 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.