(2013) 07 KL CK 0090

In the High Court Of Kerala

Case No : Bail Application No. 4856 of 2013

Tenny Joppen	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:
- Criminal Procedure Code, 1973 (CrPC) — Section 439
- Penal Code, 1860 (IPC) — Section 34, 420

Citation : (2013) 07 KL CK 0090

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : P. Vijaya Bhanu, Sri. Vipin Narayan and Sri. Dileep P. Pillai, for the Appellant; K.P. Dandapani, Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Satheesachandran, J.—Petitioner is the third accused in Crime No. 656 of 2013 of Konni Police Station, Pathanamthitta district, registered for the offence punishable u/s 420 r/w Section 34 of Indian Penal Code. The crime is now under investigation, and petitioner has filed the above application seeking his release on bail u/s 439 of the Code of Criminal Procedure, for short, ''the Code''. Crime was registered on a complaint filed before the magistrate by one Sreedharan Nair against two persons (A1 and A2) alleging that they defrauded and cheated him of a sum of Rs. 40,00,000/- with false promises and practising deception. Seeing an advertisement published by accused who operated business under the name of ''Team Solar Energy Solutions'' petitioner contacted them. He was then promised of land site in Kinfra Park, Palaghat to install a solar energy plant with full assistance from government. He was taken to the office of Chief Minister, where he talked with Chief Minister and officers, and the accused assured him and made him believe that all assistance for the plant will be provided by government. The accused (A1 and A2) collected three cheques, for a total sum of Rs. 40 lakhs, from complainant, after an agreement was signed with him to meet the initial expenses for installing the plant. Cheques were encashed by the accused, and, later, above complainant realised that he was cheated by them. Complaint was forwarded to police for investigation and report by magistrate, and, the crime was registered at Konni Police Station for the offence stated supra. During the course of investigation the accused named in the complaint were arrested. Investigation of crime disclosing complicity of petitioner, working as Personal Assistant of Chief Minister, in the cheating of de facto complainant with the accused named in the complaint he was arrested on 28.06.2013. Later, on production before the magistrate he was remanded to judicial custody, which still continues.

2. I heard learned counsel for petitioner and also learned Advocate General. Learned senior counsel Sri. P. Vijayabhanu appearing for petitioner submitted that no specific allegation is imputed in the complaint against petitioner who worked in the office of Chief Minister. The allegations raised in the complaint would show, according to the counsel, even before coming into contact with petitioner complainant had handed over two cheques, out of the sum of Rs. 40,00,000/-, to the accused persons named in his complaint. That itself would show if at all any false representation, inducement and deception had been practised on the complainant, petitioner was not a party to the cheating, and he is not liable to be proceeded for the offence u/s 420 of Indian Penal Code with the other two accused. Petitioner is absolutely innocent and has been falsely implicated in the crime, is the further submission of counsel. After his arrest his custody was not sought for by police for the purpose of investigation is also pointed out by the counsel to contend that his further detention is not essential for a fair completion of investigation of the crime. Petitioner is prepared to abide by any condition imposed by this court for his release on bail and is also ready and willing to co-operate with investigation of the crime, is the further submission of counsel to urge for his release on bail. Opposing the application learned Advocate General, Sri. K.P. Dandapani, submitted that the investigation of the crime and also some other crimes, now, popularly known as Solar Scam cases, is being conducted by a Special investigation team headed by an Additional Director General of Police. Investigation so far conducted has disclosed that accused persons named in the complaint, A1 and A2, have cheated not only the complainant, but, several other persons of substantial sums with false promises that they have authority and also are capable of assisting them in installing Solar Energy Plants, Solar Wind Mills and other projects related to solar energy with substantial sum given as subsidy from the government. Investigation of such cases is only at the preliminary stage and so far as the present case it is submitted direct involvement of petitioner with the accused persons named in the complaint in defrauding the de facto complainant abusing his position as an employee of the office of Chief Minister has been disclosed by the materials collected, and, as such, his release on bail, at this stage, will hamper the investigation. Position held by him as an employee in the office of Chief Minister and the amount of influence exercised by him over various persons and authorities, is also to be taken into account with the gravity of offence,

submits learned Advocate General. It is also submitted that investigating agency apprehends that petitioner, if released on bail, is likely to tamper with the evidence of crime and also influence persons acquainted with the facts of the case from disclosing true facts before police or court. Phone call details of petitioner with the other two accused and also transactions carried out in his bank accounts are yet to be probed in the investigation. At this stage, absence of specific particulars over the role of petitioner in the complaint in the cheating made cannot be given much significance, is the submission of learned Advocate General. But, for the involvement of petitioner and false assurances given by him, that too abusing the office held by him as Personal Assistant of the Chief Minister, complainant would not have parted with the third cheque to the other accused persons, submits the learned Advocate General, to oppose the release of petitioner on bail at this stage when investigation over the crime is continuing. Case diary has been produced for my perusal. Perusing the case diary with reference to the submissions made by learned counsel for petitioner and also that of Advocate General, it is seen, that the present case is one among the cases now known as Solar Scam cases, whereunder two persons, A1 and A2 in the crime, are alleged to have defrauded substantial sums from several persons with false promises of arranging subsidies and other benefits for implementing solar related renewable energy projects. In the present case, direct involvement of petitioner in assisting those two accused in defrauding the de facto complainant is attributed to rope him also as a co-accused with them in the offence of cheating. Petitioner working as a Personal Assistant attached to the Chief Minister and, in that capacity, assured the de facto complainant that whatever represented to him by the other two accused would be given effect to and necessary assistance from the Government including subsidy for the project envisaged would be provided, is the allegation. From the materials collected during the investigation, which I am not adverting to since the crime is now under investigation, there is sufficient room to doubt his complicity in the offence of cheating the complainant with the other two accused. Specific allegation of cheating by petitioner as such is not spelt out in the complaint, at this stage, cannot be given any significance when imputation made against petitioner in the case has to be viewed in the backdrop of the operation of fraudulent activities committed by the two accused persons named in the complaint, which are now under investigation as Solar scam cases. Present crime involving petitioner is one among the cases in a scam whereunder the other two accused persons are alleged to have defrauded several persons of substantial sums of money, that too allegedly with the assistance of some public men holding responsible positions. Imputation against petitioner, a Personal Assistant attached to the Chief Minister, that he aided and assisted those accused in cheating the de facto complainant, necessarily, has to be taken with reference to the above scam cases in considering his release on bail, at this stage, when investigation of crime is continuing. In cases where a person is accused of a non-bailable offence grant or refusal of bail depends on various factors like the nature of the offence and its seriousness, the character of the evidence on which the prosecution case rests, the circumstances which are peculiar to the accused, reasonable possibility of the presence of the accused at the trial not being secured, reasonable apprehension of witness being tampered with if the accused is released on bail, the larger interest of the public and the State and such other similar considerations which arise in the particular case. The offence involved in the case is of a serious kind where it is imputed that petitioner a Personal Assistant attached to the office of Chief Minister assisted and aided the other two accused who carried out mass scale cheating of defrauding de facto complainant and others of substantial sum. After going through the materials collected in the case diary, I find that there is room to suspect the involvement of petitioner in the crime. Petitioner, who was attached to the Chief Minister as his Personal Assistant, if released on bail, would tamper the evidence of the crime, is the apprehension expressed, and it cannot be brushed aside. At the early stage of the case, when it is not possible to the court to express a definite opinion as to the nature of the offence which the facts proved will constitute the exercise of discretion vested with the court in the grant of bail cannot be done lightly in favour of an accused where facts and circumstances presented in the case show his complicity with the other accused in the commission of the crime, which is of a serious nature. I find, petitioner is not entitled to be released on bail, at this stage, when investigation of the crime is in progress.

Petition is dismissed.

