

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

Thursday, the 1st day of August 2024 / 10th Sravana, 1946

BAIL APPL. NO. 3610 OF 2024

CRIME NO.EIR/KZSZO/12/2021 OF ENFORCEMENT DIRECTORATE KOZHIKODE,
PETITIONER/ACCUSED:

K.K ABRAHAM, AGED 62 YEARS, S/O KURIAKOSE, KUZHUMBIL (H),
CHUNDAKKOLLI, PULPALLI, WAYANAD, PIN - 673579

RESPONDENTS/RESPONDENT:

1. ASST.DIRECTOR, DIRECTORATE OF ENFORCEMENT, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, KOZHIKODE SUB ZONAL OFFICE, 3RD FLOOR,
KENDRIYA BHAVAN, M.S. BABURAJ ROAD, KALLAI,KOZHIKODE , PIN - 673003
2. SUPERINTENDENT OF JAIL, DISTRICT JAIL KOZHIKODE, PUTHIYARA,
KOZHIKODE, PIN - 673004

This Bail application again coming on for orders upon perusing the petition and this court's order dated 29.07.2024 and upon hearing the arguments of M/S ARUN KRISHNA DHAN, ARJUN SREEDHAR, T.K.SANDEEP, ALEX ABRAHAM, SWETHA R, HARIKRISHNAN P.B & GOWRI MENON, Advocates for the petitioner and PUBLIC PROSECUTOR for the respondents, the court passed the following:



C.S.DIAS, J.

B.A.No. 3610 of 2024

Dated this the 1st day of August, 2024

ORDER

The application is filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Code'), by the 2nd accused in Enforcement Directorate Crime No.ECIR/KZSZO/12/2021, registered against him for allegedly committing the offence punishable under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002 (for short 'the Act').

2. The gist of the prosecution case is that: the accused, who are the officer bearers of the Pulpally Service Co-operative Bank, Pulpally, Wayanad ('Bank', in short), had availed several loans in the names of different persons, without their consent and knowledge, by overvaluing the properties offered as collateral security and failed to repay the loan amount.

Thus, the accused have caused a loss of Rs.5.62 crore to the Bank. Rupees 1.76 crore was transferred to the account of the 1st accused. The 2nd accused was the President of the Bank, who conspired with the other accused, and had made wrongful gain for themselves and wrongful loss to the Bank. Thus, the accused have committed the above offence.

3. Heard; Sri. Arun Krishna Dhan, the learned counsel appearing for the petitioner, Sri. Jaishankar V. Nair, the learned Standing Counsel for the 1st respondent and Sri. C. S. Hrithwik, the learned Public Prosecutor.

4. The learned counsel for the petitioner submitted that the petitioner is suffering from severe recurrent abdominal pain. The petitioner had collapsed on multiple occasions in the jail. The petitioner needs expert medical treatment. Even

though the petitioner had filed an application before the Court of Session, Kozhikode, the same was dismissed by Annexure A1 order, on the ground that there is no medical records to establish that the petitioner is suffering from any life threatening disease. The finding of the learned Sessions Judge is erroneous and wrong in view of the medical report produced before this Court. If the petitioner is not enlarged on bail, there is every likelihood of him losing his life. The first proviso to Section 45(1) of the Act permits a person to be released on bail, if he is sick or infirm. This aspect was not taken note of by the trial court. Hence, the application may be allowed.

5. The learned Standing Counsel appearing for the 1st respondent seriously opposed the application. He submitted that in view of the rigor under Section 45 of the Act, the petitioner may not be released on

bail. Even if the petitioner has any serious ailment, the same can be treated under the supervision of the jail authorities. If the petitioner is released on bail, there is every likelihood of him tampering with the evidence and intimidating the witnesses. Hence, the application may be dismissed.

6. When the application came up for consideration on 28.05.2024, this Court directed the Jail Superintendent to get the petitioner examined by a doctor and file a report before this Court.

7. Pursuant to the said order, the Professor of the Department of Surgery, Government Medical College Hospital, Kozhikode had examined the petitioner. By letter dated 01.06.2024, it is reported that the petitioner had recurrent abdominal pain for the last two to three years. The petitioner has been diagnosed to be suffering from cholecystitis. The petitioner

needs an elective surgery laparoscopic cholecystectomy. The procedure can be conducted on 03.08.2024.

8. When the application came up for consideration on 29.07.2024, the learned counsel appearing for the petitioner submitted that the petitioner is not desirous of getting the surgery conducted at the Government Medical College Hospital, Kozhikode. Instead, the petitioner desires to get the surgery conducted in a private hospital of his choice and own expense.

9. Consequently, this Court directed the petitioner to produce materials to show that he has made a consultation with the private hospital. Accordingly, the learned counsel for the petitioner has filed an affidavit and has produced Annexures A3 to A5 documents to prove that the family members of the

petitioner had consulted Dr.Moopen's Medical College, Wayanad and the Gastroenterologist is of the opinion that the petitioner has to be examined before a final opinion is taken in the matter.

10. The petitioner is alleged to have committed the offences under Section 3 read with Section 4 of the Act. The proviso to Section 45(1) of the Act explicitly provides that when a person is reported to be sick or infirm, he may be released on bail as directed by the Court.

11. On a perusal of the treatment records of the petitioner issued by the Government Medical College Hospital, Kozhikode, I am satisfied that the petitioner is suffering from a serious illness and he needs immediate treatment. In view of the fact that the petitioner's family members have already consulted a doctor of their choice and the Gastroenterologist has

stated that the petitioner is to be examined to give a final opinion in the matter, I am of the firm view that the petitioner is entitled to be enlarged on interim bail for the time being, subject to the condition that he produces the medical reports issued by the doctor of his choice.

12. In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum, to the satisfaction of the Trial Court having jurisdiction, which shall be subject to the following conditions:

- i. The petitioner shall appear before the Investigating Officer as and when directed. He shall also furnish his and his bystander's mobile numbers to the Investigating Officer;

- ii. The petitioner shall not directly or indirectly make any inducement, threat or procure 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 in any manner, whatsoever;
- iii. The petitioner shall not commit any offence while he is on bail;
- iv. The petitioner shall surrender his passport, if any, before the Trial Court at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the Trial Court on the date of execution of the bond;
- v. The petitioner shall not leave the Wayanad and Kozhikode districts, without the previous

permission of this Court;

vi. In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law;

vii. The petitioner shall produce the reports of the doctor on or before the next posting date.

Post on 21.08.2024.

Sd/-
C.S. DIAS
JUDGE

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