

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS
Tuesday, the 31st day of May 2022 / 10th Jyaishta, 1944**

BAIL APPL. NO. 3475 OF 2022

**CRIME NO.515/2022 OF Ernakulam South Police Station, Ernakulam
PETITIONERS:**

**VIJAY BABU, AGED 45 YEARS, S/O V. SUBASH CHANDRA BABU SREE LAKSHMI,
LAKSHMI NADA, KOLLAM, PIN - 691013**

RESPONDENTS:

- 1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031**
- 2. STATION HOUSE OFFICER E T SOUTH POLICE STATION, ERNAKULAM, PIN - 682015**
- 3. * BUREAU OF IMMIGRATION, REGIONAL OFFICE AT COCHIN INTERNATIONAL AIRPORT, 2ND FLOOR, AIRLINES BUILDING, CIAL NEDUMBASERRY, COCHIN AIRPORT P 0-683111.**
- 4. * xxxx**

*** Addl.R3 and R4 are impleaded as per order dated 31/05/2022 in CRL.M.A.NO.3/2022 and CRL.M.A 6/2022.**

This Bail application coming on for orders upon perusing the petition and upon hearing the arguments of M/S S.RAJEEV, V.VINAY, M.S.ANEER, SARATH K.P. Advocates for the petitioner and Sri.Gracious Kuriakose Addl. Director General of Prosecution along with PUBLIC PROSECUTOR for the R1 & R2 and of M.R.RAJESH, A.K PREETHA Advocates for the R4 and of ASG for R3, the court passed the following:

BECHU KURIAN THOMAS, J

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B.A.No.3475 of 2022
.....

Dated this the 31st day of May, 2022

ORDER

Petitioner seeks pre-arrest bail through this bail application. Petitioner also seeks an interim protection from arrest pending consideration of the bail application.

2. The learned Additional Director General of Prosecution, Sri.Gracious Kuriakose, contended at the outset itself that petitioner is not in the country, disentitling consideration of the application. He however submitted that notwithstanding the aforementioned disentitlement, this Court may hear the bail application itself on merits, instead of considering the present prayer for grant of an interim protection.

3. The learned counsel for the petitioner, Sri.S.Rajeev, submitted that the petitioner is arrayed as an accused in Crime No. 515 of 2022 of the Ernakulam South Police Station alleging offence under 376(2) (n), 506 and section 323 of the Indian Penal Code 1860. The learned Counsel submitted that though petitioner is presently outside the Country he is willing to come down to Kerala, within the jurisdiction of this Court and face investigation. However, due to the threat of

immediate arrest raised by the investigation, he fears deprivation of his liberty without getting an opportunity to have the application for pre-arrest bail considered on merits. In such circumstances, petitioner pleads for an interim protection from arrest.

4. The learned counsel for the petitioner, further, submitted that petitioner had even booked his tickets to come down to India on 30.05.2022, however, without the protection from arrest he feared deprivation of his liberty from the airport itself, and therefore petitioner was compelled to postpone his travel. It was urged that petitioner is ready to be within the jurisdiction of this Court within 24 hours if protection is granted.

5. Sri.Gracious Kuriakose, the learned Additional Director General of Prosecution, on the other hand submitted that petitioner had filed the bail application after fleeing the country and his intention was to remain outside the jurisdiction, elusive to the investigation. However, due to the steps initiated by the police for impounding his passport and other lookout notices, petitioner has now changed his stance and is expressing willingness to come within the jurisdiction of this Court, which cannot be taken at its face value as a bonafide step. He invited the attention of the Court to the absence of pleadings in the bail application relating to the whereabouts of the

petitioner. The learned Additional Director General of Prosecution, also relied upon the decision of this Court in *Souda Beevi v. Sub Inspector of Police & Others* 2011 (4) KLT 52, as well as *S.M.Shaffi v. State of Kerala* 2020 (4) KHC 510 and submitted that, petitioner's presence outside the country does not entitle him to maintain this very application itself.

6. Sri.M.Rajesh, the learned counsel appearing for the victim submitted that the petitioner has not been *bona fide* in his application and had not even divulged his whereabouts at the time of filing the application.

7. On a consideration of the aforesaid contentions solely for the purpose of interim protection, I notice the decision in *Sushila Aggarwal and Others v. State (NCT of Delhi) and another* [(2020) 5 SCC 1], wherein a Constitution Bench of the Supreme Court had considered various principles relating to the grant of anticipatory bail. It was observed that the paramount right of every individual protected under Article 21 of the Constitution of India, can be deprived only by procedure established by law and that Section 438 is one such procedure which the legislature has enacted and that courts should lean against imposition of unnecessary restrictions on the scope of section 438, especially when not imposed by the legislature.

8. Bearing in mind the aforesaid principles laid down by the Supreme Court, I am of the view that, for the present, merely because the petitioner is outside the country, the same by itself cannot deprive him of his right to have his application for anticipatory bail considered by this Court. The decision referred to in *Souda Beevi's* case (supra) can be said to be impliedly overruled and decision in *S.M.Shaffi's case* (supra) did not take notice of the judgment in Sushila Agarwal's case and therefore, could be regarded as judgment *sub silentio*. However, I clarify that the above observations are made only for considering the grant of interim protection from arrest.

9. Be that as it may, the essential requirement of every investigation is that the accused must be within its control for the purpose of carrying out an effective and fair investigation. It augurs well in the interest of the investigation as well as for the victim that the accused submits himself to the jurisdiction of the investigating team. In the application filed as M.A.No.7/2022 it is asserted that the petitioner has booked his tickets for 01.06.2022. Petitioner has also produced a copy of the confirmed ticket for travel from Dubai to Kochi. Thus when the petitioner himself expresses his willingness to come within the jurisdiction of this Court and the investigation team, but expresses his apprehension of arrest from the Airport itself, I am

of the view that the said circumstance necessitates the grant of interim protection from arrest, atleast for a limited period of time. I hasten to add that the intention of the police to arrest the petitioner, from the Airport itself, was reflected in the arguments advanced by the learned Additional General of Prosecution. Therefore the need for interim protection sought for by the petitioner is justified.

10. In view of the above, it is not only in the interest of the petitioner , but also in the interest of the victim as well as the investigation, that the petitioner be protected from arrest for a minimum period of time, to enable him to submit to the territorial jurisdiction of this Court without further delay. Accordingly, I direct the respondents not to arrest the petitioner for a limited period as mentioned below.

11. The respondents, including the Bureau of Immigration who have been impleaded in this bail application are directed not to arrest the petitioner till 02.06.2022, until this Court considers the case again.

12. Petitioner shall, immediately on arrival in the country, appear before the investigating officer and mark his presence. The investigating officer will also be free to interrogate the petitioner after the petitioner appears before him.

13. The Director General of Prosecution as well as the Assistant

B.A.No.3475/22

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Solicitor General of India shall intimate the content of this order to the investigating officer as well as the other respondents.

Post on 02.06.2022.

Sd/-
BECHU KURIAN THOMAS
JUDGE

AMV/31/05/2022

