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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

TUESDAY, THE 6TH DAY OF JULY 2021 / 15TH ASHADHA, 1943

BAIL APPL. NO. 3864 OF 2021

(CRIME NO.224/2021 OF MUSEUM STATION, THIRUVANANTHAPURAM
DISTRICT)

PETITIONER/ACCUSED:

RAHUL R.U
AGED 29 YEARS
SON OF G.RAJAN,
ANIZHAM HOUSE, PATTAKKULAM,
VEERANKAVU P.O, THIRUVANANTHAPURAM, PIN - 695572
BY ADV VIVEK VENUGOPAL

RESPONDENT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM, PIN - 682031

SRI A RAJESH -SPL PP VACB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
01.07.2021, THE COURT ON 06.07.2021 DELIVERED THE
FOLLOWING:

"CR"

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R.NARAYANA PISHARADI, J

B.A.No.3864 of 2021

Dated this the 6th day of July, 2021

ORDER

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This is an application for anticipatory bail filed under Section 438 of the Code of Criminal Procedure,1973 (for short 'the Code').

2. The petitioner is the first accused in the case registered as Crime No.240/2021 of the Museum Police Station.

3. The case was registered against the accused initially under Sections 408, 417 and 420 read with 34 of the Indian Penal Code. Subsequently, the investigating officer filed report in the court concerned for continuing the investigation into the

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offences punishable under Section 13(1)(a) of the Prevention of Corruption Act, 1988 (as amended by Act 16 of 2018) and also under Sections 465, 468, 471 and 120B of the IPC.

4. The prosecution case is as follows: The petitioner, who is the first accused, was the Senior Clerk in the Office of the Scheduled Caste Development (SCD), Thiruvananthapuram Corporation. There are various schemes formulated by the Government for improving the social conditions of persons who belong to scheduled castes. The applications received for monetary relief would be processed in the SCD office and recommendation for sanctioning money would be made to the Scheduled Caste Development Officer in eligible cases. The money sanctioned would be passed for payment by the treasury and it would be transferred to the bank accounts of the beneficiaries through Bill Information Management System. The bank account numbers of the beneficiaries are being entered in the SCD office. The petitioner was the person in the SCD office who accepted the applications and processed the same.

Accused 2 to 11 are close relatives or friends of the petitioner. The fourth accused was a Clerk in the SCD office and the fifth and the eleventh accused were scheduled caste promoters. Pursuant to a conspiracy hatched by the accused persons, the petitioner incorporated the bank account numbers of accused 2 to 11 in forged applications and using such applications, he got transferred about seventy lakhs rupees to their bank accounts. Thus, the accused siphoned out money which was intended to be paid to the poor and needy persons and misappropriated it and cheated those persons and also the Government.

5. Heard learned counsel for the petitioner and the learned Public Prosecutor. Perused the case diary and the statement filed by the investigating officer.

6. True, this Court has granted anticipatory bail to some of the accused to whom the petitioner had transferred the money. But, on the ground of parity, the petitioner is not entitled to get the same relief. The case against the petitioner altogether stands on a different footing.

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7. Parity while granting bail must focus upon the role of the accused. In deciding the aspect of parity, the role attached to the accused, that is, his position in relation to the incident and to the victims, is of utmost importance (See **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai : AIR 2021 SC 2011 : 2021 SCC OnLine SC 335**).

8. The petitioner is the mastermind behind the entire operation conducted for embezzlement of money. It appears that the embezzlement scheme was his brain child. He has allegedly played a prominent role in the matter of facilitating the sanctioning of money on the basis of forged applications. According to the prosecution, he has been successful in siphoning out about seventy lakhs rupees. A deeper probe is required to ascertain the exact amount embezzled by him.

9. Custodial interrogation of the petitioner is essential to have an effective investigation in this case. If the petitioner is equipped with an order under Section 438 of the Code, it would greatly harm the investigation. It would impede the prospects of

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unearthing all the ramifications involved in the conspiracy. Public interest would suffer as a consequence.

10. Custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is protected by a favourable order under Section 438 of the Code. Success in interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order when he is interrogated by the police (See **C.B.I v. Anil Sharma : AIR 1997 SC 3806**).

11. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community (See **State of Gujarat v. Mohanlal Jitmalji Porwal : AIR 1987 SC 1321**). Economic offences, having deep-rooted conspiracies and involving huge loss of public funds, need to be viewed seriously and considered as grave offences (See **Y. S. Jagan Mohan Reddy v. CBI : AIR 2013 SC 1933**).

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12. In the instant case, huge amount of public money, which was intended to be utilised for the uplifting of persons who belong to scheduled caste, was embezzled by the petitioner. The discretionary power under Section 438 of the Code cannot be exercised in favour of such persons. Grant of anticipatory bail to the petitioner would frustrate effective interrogation of him thereby preventing the investigating officer from collecting useful information.

13. Learned counsel for the petitioner submitted that the petitioner is ready to surrender before the investigating officer and he may be permitted to do so.

14. While dismissing an application for anticipatory bail, is it legally permissible for the court to direct the accused to surrender before the investigating officer or the jurisdictional court within a specific period?

15. The aforesaid question was considered by the Supreme Court in **Nathu Singh v. State of Uttar Pradesh : 2021 SCC OnLine SC 402** and it was held as follows:

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"Even when the Court is not inclined to grant anticipatory bail to an accused, there may be circumstances where the High Court is of the opinion that it is necessary to protect the person apprehending arrest for some time, due to exceptional circumstances, until they surrender before the trial court. For example, the applicant may plead protection for some time as he/she is the primary caregiver or breadwinner of his/her family members, and needs to make arrangements for them. In such extraordinary circumstances, when a strict case for grant of anticipatory bail is not made out, and rather the investigating authority has made out a case for custodial investigation, it cannot be stated that the High Court has no power to ensure justice. It needs no mentioning, but this Court may also exercise its powers under Article 142 of the Constitution to pass such an order. However, such discretionary power cannot be exercised in an untrammelled manner. The Court must take into account the statutory scheme under Section 438, Cr.P.C., particularly, the proviso to Section 438(1), Cr.P.C., and balance the concerns of the investigating agency, complainant and the society at large with the concerns/interest of the applicant. Therefore,

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such an order must necessarily be narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating authority. Such an order must be a reasoned one."

16. In **Anthru v. Sub Inspector of Police : (2015) 4 KHC 61**, this Court has held that the direction to surrender militates against the concept of 'anticipatory bail' and that it is illegal for the Court to direct the accused to surrender before the investigating officer and when Court dismisses the application for anticipatory bail, there is no justification at all to direct the accused to surrender before the Magistrate or the investigating officer. The decision in **Anthru** (supra) was followed by this Court in **Raveendran v. State of Kerala (2018 (1) KHC 620)**.

17. The principles laid down by this Court in **Anthru** (supra) and followed by this Court in **Raveendran** (supra) as mentioned above cannot be considered as good law in the light of the dictum laid down by the Apex Court in **Nathu Singh** (supra).

18. In the instant case, the request made by the petitioner to permit him to surrender before the investigating officer can be

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favourably considered. The case against the accused was registered as early as on 08.04.2021. The investigating officer could not yet arrest the petitioner. If the petitioner is permitted to surrender before the investigating officer by granting him a short time, it would only facilitate the investigation.

19. In the aforesaid circumstances, the prayer for granting pre-arrest bail to the petitioner is rejected. The petitioner is directed to surrender before the investigating officer within a period of seven days from today. On his surrender before the investigating officer within the above period, if he is arrested and produced before the jurisdictional court and if he files any application for regular bail, such application shall be considered and disposed of by that court preferably on the same day itself.

20. The application for anticipatory bail is disposed of as above. The case diary produced shall be returned forthwith.

(sd/-)

R.NARAYANA PISHARADI, JUDGE

jsr

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PS to Judge