

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

TUESDAY, THE 09TH DAY OF JULY 2019 / 18TH ASHADHA, 1941

Cr1.MC.No.2932 of 2019

AGAINST THE ORDER DATED 29.03.2019 IN CRMP 1878/2019 IN CRIME
NO.667/2019 OF KAYAMKULAM POLICE STATION

PETITIONER/1ST ACCUSED:

LEKHA,
AGED 38 YEARS
D/O.LALITHA, KAPPATHAZHATHU KIZHAKETHIL,
PERINGALA P.O., KAYAMKULAM, ALAPPUZHA.

BY ADV. SRI.B.PRAMOD

RESPONDENTS/COMPLAINANT & STATE:

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
ERNAKULAM - 682 018.

PUBLIC PROSECUTOR SMT.M.K.PUSHPALATHA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09.07.2019,
ALONG WITH Cr1.MC.2934/2019, Cr1.MC.2940/2019, Cr1.MC.2987/2019,
THE COURT ON 09.07.2019 PASSED THE FOLLOWING:

CrI.M.C.No.2932/2019
&
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

TUESDAY, THE 09TH DAY OF JULY 2019 / 18TH ASHADHA, 1941

CrI.MC.No.2934 of 2019

AGAINST THE ORDER DATED 29.03.2019 IN CRMP 1879/2019 IN CRIME
NO.670/2019 OF KAYAMKULAM POLICE STATION

PETITIONER/1ST ACCUSED:

LEKHA,
AGED 38 YEARS
D/O.LALITHA, KAPPATHAZHATHU KIZHAKETHIL,
PERINGALA P.O., KAYAMKULAM, ALAPPUZHA.

BY ADV. SRI.B.PRAMOD

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THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
09.07.2019, ALONG WITH CrI.MC.2932/2019, CrI.MC.2940/2019,
CrI.MC.2987/2019, THE COURT ON 09.07.2019 PASSED THE FOLLOWING:

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

TUESDAY, THE 09TH DAY OF JULY 2019 / 18TH ASHADHA, 1941

Crl.MC.No.2940 of 2019

AGAINST THE ORDER DATED 29.03.2019 IN CRMP 1876/2019 IN CRIME
NO.226/2019 OF VALLIKUNNAM POLICE STATION

PETITIONER/1ST ACCUSED:

LEKHA,
AGED 38 YEARS
D/O.LALITHA, KAPPATHAZHATHU KIZHAKETHIL,
PERINGALA P.O., KAYAMKULAM, ALAPPUZHA.

BY ADV. SRI.B.PRAMOD

RESPONDENTS/COMPLAINANT & STATE:

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
ERNAKULAM - 682 018.

PUBLIC PROSECUTOR SMT.M.K.PUSHPALATHA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
09.07.2019, ALONG WITH Crl.MC.2932/2019, Crl.MC.2934/2019,
Crl.MC.2987/2019, THE COURT ON 09.07.2019 PASSED THE FOLLOWING:

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

TUESDAY, THE 09TH DAY OF JULY 2019 / 18TH ASHADHA, 1941

CrI.MC.No.2987 of 2019

AGAINST THE ORDER DATED 29.03.2019 IN CRMP 1877/2019 IN CRIME
NO.669/2019 OF KAYAMKULAM POLICE STATION

PETITIONER/1ST ACCUSED:

LEKHA,
AGED 38 YEARS
D/O.LALITHA, KAPPATHAZHATHU KIZHAKETHIL,
PERINGALA P.O., KAYAMKULAM, ALAPPUZHA.

BY ADV. SRI.B.PRAMOD

RESPONDENTS/COMPLAINANT & STATE:

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
ERNAKULAM - 682 018.

PUBLIC PROSECUTOR SRI.M.S.BREEZE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
09.07.2019, ALONG WITH CrI.MC.2932/2019, CrI.MC.2934/2019,
CrI.MC.2940/2019, THE COURT ON 09.07.2019 PASSED THE FOLLOWING:

"CR"

R.NARAYANA PISHARADI, J

Crl.M.C.Nos.2932 of 2019, 2934 of 2019,
2940 of 2019
and
2987 of 2019

Dated this the 9th day of July, 2019

ORDER

Is it legal and proper to issue a direction for deposit of cash by a person, while exercising the power under Section 438(1) read with 438(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), as a condition for granting him the benefit of anticipatory bail? This question arises for consideration in these petitions filed under Section 482 of the Code.

2. The petitioner, in all these petitions, is one and the same person. She is accused of committing an offence punishable under Section 420 of the Indian Penal Code. She is one of the accused in the four cases registered as Crime No.226/2019 of the Vallikunnam police station and Crime

Nos.667/2019, 669/2019 and 670/2019 of the Kayamkulam police station under Section 420 read with 34 of the Indian Penal Code.

3. The prosecution case against the petitioner is that she obtained huge amount of money from four persons for business purpose and also on the promise that she would arrange visa for their close relatives but she did not arrange any visa and that she also did not return the money and thereby committed the offence of cheating.

4. The petitioner filed four applications under Section 438 of the Code before the Court of Session, Alappuzha for granting anticipatory bail to her in the aforesaid four cases. The learned Sessions Judge, as per the common order dated 23.03.2019, allowed the applications on conditions. One of the conditions is that the petitioner shall, before execution of the bail bond, deposit Rs.25,000/- each in the four cases.

5. The petitioner filed applications before the Court of Session for deleting or modifying the condition regarding deposit of cash. The aforesaid applications were dismissed by the learned Sessions Judge. The petitioner has approached this Court praying that, the direction issued by the learned Sessions

Judge to deposit Rs.25,000/- each in the four cases, may be set aside.

6. Heard learned counsel for the petitioner and the learned Public Prosecutor.

7. Learned counsel for the petitioner submitted that the petitioner has no job or income and that she has got no funds with her to comply with the condition regarding deposit of cash. Learned counsel would contend that, the direction made by the learned Sessions Judge to deposit Rs.25,000/- each in the four cases, is illegal and at any rate, it amounts to an onerous and unreasonable condition.

8. *Per contra*, learned Public Prosecutor has contended that the petitioner had obtained huge amount of money from four persons and misappropriated it and therefore, the learned Sessions Judge was perfectly justified in issuing a direction to her to deposit Rs.25,000/- each in the four cases, as a condition for granting her anticipatory bail.

9. Section 438(1) of the Code states that, where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction

under that section that in the event of such arrest he shall be released on bail. Section 438(2) of the Code states that when the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit.

10. While granting relief under Section 438(1) of the Code, the court is empowered to impose appropriate conditions. The object of imposing such conditions is to avoid the possibility of the person hampering the investigation of the case. Any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under law. The discretion of the court, while imposing conditions, shall be exercised with utmost restraint. There is no absolute power conferred on a court to impose "any condition" that it chooses. Conditions imposed shall be reasonable and effective in the pragmatic sense. A condition imposed shall not defeat the order of granting bail (See **Sumit Mehta v. State : (2013) 15 SCC 570**).

11. In **Amarjit Singh v. State : (2009) 13 SCC 769**, the Sessions Judge had granted anticipatory bail subject to the

condition that the accused shall deposit a sum of 15 lakhs rupees in the form of fixed deposit receipt in the name of the trial court. The Apex Court found that such a condition was unreasonable and set aside the direction in that regard.

12. In **Ramathal v. Inspector of Police : (2009) 12 SCC 721**, the High Court had passed an order granting anticipatory bail on condition that in the event of arrest, the accused shall be enlarged on bail on their depositing Rs.32,00,000/- in the court. The Apex Court found that the approach of the High Court was incorrect in imposing an unreasonable and onerous condition for granting anticipatory bail.

13. In **Bharat Stars Services Private Ltd. v. Harsh Dev Thakur: AIR 2019 SC 718**, in a case of financial fraud involving 2.78 crore rupees, the Apex Court found that deposit of an amount 50 lakhs rupees as directed by the High Court was not sufficient for granting bail and directed the accused to deposit a total amount of 1.25 crores rupees. It is to be noted that it was a case of granting regular bail to an accused who was in jail for a long period.

14. In **Keshab Narayan Banerjee v. State of Bihar:**

AIR 1985 SC 1666, the Apex Court had found that the condition imposed by the High Court for enlarging the accused on bail, namely, that he should furnish security for one lakh rupees in cash or in fixed deposit of any nationalised bank, was excessively onerous and it virtually amounted to denying bail.

15. In **Syamkumar v. State of Kerala (2010 (4) KLT 405)**, this Court had found that a direction to make cash security for Rs.20,000/-, while granting anticipatory bail to an accused, is unreasonable. This Court set aside the order passed by the court below in that regard.

16. In **Jomon v. State of Kerala (2010 (2) KHC 264 : 2010 (2) KLT 371)**, this Court had set aside an order passed by the Sessions Judge for deposit of cash security of Rs.25,000/- while granting regular bail to an accused.

17. In **Ramakrishna Pillai v. State of Kerala (2012 (3) KHC 411)**, this Court had set aside the order of the Sessions Court directing deposit of an amount of Rs.3,00,000/- as cash security as a condition for granting anticipatory bail on the ground that such a direction is not in consonance with law.

18. In **Sumit Mehta** (supra), the direction given by the High Court, while granting anticipatory bail to the accused, was

that the accused shall deposit one crore rupees in fixed deposit in the name of the complainant in any nationalised bank and keep the fixed deposit receipt with the investigating officer. The Apex Court set aside the aforesaid condition stating that imposing such a condition while granting anticipatory bail was onerous and unreasonable. At the same time, the Apex Court has observed as follows:

"Certainly, in no words are we suggesting that the power to impose a condition of this nature is totally excluded, even in cases of cheating, electricity pilferage, white-collar crimes or chit fund scams etc."

19. The Court shall not, normally, make any direction for deposit of cash by the accused as a condition for granting him bail. But, this principle is subject to exceptions. As observed by the Apex Court in **Sumit Mehta** (supra), imposing such a condition is not totally impermissible under law. Deposit of cash, as a condition for granting anticipatory bail, is permissible in cases of cheating, financial frauds, white-collar crimes etc. But, the court has to take care that, the amount ordered to be deposited in such cases, is not highly excessive or onerous. The condition imposed shall be reasonable and it shall not amount to virtually denying the accused the benefit of bail.

20. In the instant cases, the petitioner is accused of committing the offence of cheating. Therefore, it cannot be found that the learned Sessions Judge had no power at all to make a direction for deposit of cash by the petitioner as a condition for granting her anticipatory bail. However, the crucial question is whether making such a direction was justified in the facts and circumstances of the cases.

21. On a perusal of the common order passed by the learned Sessions Judge, two vital aspects can be noticed. In the first place, the allegation against the petitioner is not merely that she obtained money from other persons on the promise that she would arrange visa. There is also allegation that she had obtained the money for business purposes. It is not known how much amount was received by her for business purposes and how much money was received by her on the promise of arranging visa. Mere failure of the petitioner to repay the money, which was borrowed for business purposes, will not, prima facie, attract the offence of cheating.

22. In the second place, it appears that there was undue delay in reporting the matter to the police. In Crime No.669/2019, the allegation against the petitioner is that she

obtained a total amount of Rs.6,00,000/-. It is alleged that she obtained the money in instalments on various dates commencing from 08.01.2015 to 12.03.2016. In Crime No.670/2019, the allegation is that the petitioner obtained a total amount of Rs.11,00,000/- in instalments, during the period covering nearly two years commencing from 15.04.2014 to 31.03.2016. In Crime No.667/2019, the allegation is that the petitioner obtained an amount of Rs.2,00,000/- on 21.08.2014. In Crime No.226/19, the allegation is that she obtained an amount of Rs.2,50,000/- on 06.12.2015. However, the cases have been registered only in the year 2019. Moreover, atleast in two cases, the fact that the petitioner had obtained the money in instalments on various dates covering a long period, raises the doubt, whether she had obtained the amount for arranging any visa or only as a loan. At any rate, at this stage, the court cannot come to a conclusion whether the allegation of cheating made against the petitioner is true or not.

23. On consideration of the aforesaid facts and circumstances of the cases, I am of the view that the learned Sessions Judge was not justified in making a direction that the

petitioner shall deposit Rs.25,000/- in each case, as a condition for granting her anticipatory bail. The direction so made is liable to be set aside.

24. Consequently, the petitions are allowed. While retaining the order of the learned Sessions Judge granting anticipatory bail in favour of the petitioner in the four cases, the direction relating to deposit of Rs.25,000/- in each case by the petitioner, is set aside. The petitioner is granted time till 17.07.2019 to comply with other conditions stipulated in the order of the learned Sessions Judge.

(sd/-)

R.NARAYANA PISHARADI, JUDGE

Crl.M.C.No.2932/2019
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APPENDIX OF Cr1.MC 2932/2019

PETITIONER'S EXHIBITS:

- ANNEXURE I TRUE COPY OF THE COMMON ORDER DATED 23/03/2019 IN CRL.MP.NO.1627/2019 ON THE FILE OF THE SESSIONS COURT, ALAPPUZHA.
- ANNEXURE II TRUE COPY OF THE APPLICATION IN CRL.MP.NO.1878/2019 FILED BEFORE THE SESSIONS COURT, ALAPPUZHA.
- ANNEXURE III TRUE COPY OF THE COMMON ORDER DATED 29/03/2019 IN CRL.MP.NO.1878/2019 FILED BEFORE THE SESSIONS COURT, ALAPPUZHA.

RESPONDENT'S EXHIBITS : NIL

APPENDIX OF Cr1.MC 2934/2019

PETITIONER'S EXHIBITS:

- ANNEXURE I TRUE COPY OF THE COMMON ORDER DATED 23/03/2019 IN CRL.MP.NO.1626/2019 ON THE FILE OF THE SESSIONS COURT, ALAPPUZHA.
- ANNEXURE II TRUE COPY OF THE APPLICATION IN CRL.MP.NO.1879/2019 FILED BEFORE THE SESSIONS COURT, ALAPPUZHA.
- ANNEXURE III TRUE COPY OF THE COMMON ORDER DATED 29/03/201I IN CRL.MP.NO.1879/2019 FILED BEFORE THE SESSIONS COURT, ALAPPUZHA.

RESPONDENT'S EXHIBITS : NIL

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APPENDIX OF Cr1.MC 2940/2019

PETITIONER'S/S EXHIBITS:

- ANNEXURE I TRUE COPY OF THE COMMON DATED 23/03/2019 IN CRL.MP.NO.1628/2019 ON THE FILE OF THE SESSIONS COURT, ALAPPUZHA.
- ANNEXURE II TRUE COPY OF THE APPLICATION IN CRL.MP.NO.1876/2019 FILED BEFORE THE SESSIONS COURT, ALAPPUZHA.
- ANNEXURE III FREE COPY OF THE COMMON ORDER DATED 29/03/2019 IN CRL.MP.NO.1876/2019 FILED BEFORE THE SESSIONS COURT, ALAPPUZHA.

RESPONDENT'S EXHIBITS : NIL

APPENDIX OF Cr1.MC 2987/2019

PETITIONER'S/S EXHIBITS:

- ANNEXURE I TRUE COPY OF THE COMMON ORDER DATED 23/03/2019 IN CRL.M.P.NO.1625/2019 ON THE FILE OF THE SESSIONS COURT, ALAPPUZHA.
- ANNEXURE II TRUE COPY OF THE APPLICATION IN CRL.MP.NO.1877/2019 FILED BEFORE THE SESSIONS COURT, ALAPPUZHA.
- ANNEXURE III TRUE COPY OF THE COMMON ORDER DATED 29/03/2019 IN CRL.MP.NO.1877/2019 FILED BEFORE THE SESSIONS COURT, ALAPPUZHA.

RESPONDENT'S EXHIBITS : NIL

TRUE COPY

PS TO JUDGE