

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

FRIDAY, THE 28TH DAY OF MAY 2021 / 7TH JYAISHTA, 1943

BAIL APPL. NO. 6892 OF 2020

CRIME NO.464/2020 OF Valanchery Police Station, Malappuram

PETITIONER/S:

SUNIL SADATH
AGED 46 YEARS
ORAVANKUNNATH HOUSE, THEKKUMURI P.O,
KARALMANNA, PALAKKAD DISTRICT-679506, PIN - 679506

BY ADVS.
B.PREMOD
SRI.P.VIJAYA BHANU (SR.)
SMT.POOJA PANKAJ

RESPONDENT/S:

STATE OF KERALA
STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA THROUGH THE CIRCLE
INSPECTOR OF POLICE,
VALANCHERRY, MALAPPURAM.
ERNAKULAM, PIN - 676552

BY ADV PUBLIC PROSECUTOR SMT.V.SREEJA

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
30.03.2021, ALONG WITH Bail Appl..7073/2020, THE COURT ON
28.05.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

FRIDAY, THE 28TH DAY OF MAY 2021 / 7TH JYAISHTA, 1943

BAIL APPL. NO. 7073 OF 2020

CRIME NO.484/2020 OF Valanchery Police Station, Malappuram

PETITIONER/S:

SUNIL SADATH
AGED 46 YEARS
ORAVANKUNNATH HOUSE, THEKKUMURI P.O,
KARALMANNA, PALAKKAD DISTRICT-679506.,

BY ADVS.
B.PREMOD
SRI.P.VIJAYA BHANU (SR.)
SRI.B.PRAMOD
SMT.POOJA PANKAJ

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALATHROUGH THE CIRCLE INSPECTOR OF POLICE,
VALANCHERRY, MALAPPURAM-676552.
ERNAKULAM, PIN - 676552

BY ADV PUBLIC PROSECUTOR SMT.V.SREEJA

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
30.03.2021, ALONG WITH Bail Appl..6892/2020, THE COURT ON
28.05.2021 DELIVERED THE FOLLOWING:

COMMON ORDER

Dated, this the 28th day of May, 2021

[BA.No.6892 of 2020 and BA No. 7073 of 2020]

Applications for anticipatory bail under section 438 Cr.PC.

2. The applicant had preferred these two applications seeking anticipatory bail apprehending imminent arrest in two Crimes, Nos. 464/2020 and 484/2020 of the Valanchery Police Station, against him and two others, alleging commission of offences punishable under Sections 465, 468, 471 & 420 of the IPC. The crimes were originally registered against the applicant alone and later, the staff of the applicant including his son, working in his laboratory named *Arma Lab and Health*, Valanchery have been arrayed as co-accused.

3. The prosecution case in Crime 464/20, in brief, is that *Micro Health Laboratories*, Kozhikode (*'Micro Lab'* for short), is a laboratory authorised by the Government and recognized by the ICMR, to conduct tests for detecting COVID-19. Applicant is the proprietor of *Arma Lab and Health*, Valanchery (*'Arma Lab'* for short). The applicant's *Arma Lab* was made a sample collecting agent at Valancheri for the *Micro Lab*. Samples collected by the applicant were forwarded for testing to *Micro Lab* and reports were issued by them. The Public Relations Director of *Micro Lab* filed a complaint before the police on 16-09-2020, stating that the applicant and the co-accused had between the period 15/07/20 and 15/09/20 dishonestly induced the members of the public who required a

test report to travel abroad, to deliver samples for testing, and also collected money from them. Those samples were never sent to *Micro Lab* for testing and the accused issued fake certificates under the name of *Micro Lab*, without actually conducting any tests, and thereby forged Lab reports for the purpose of cheating the members of the public who had approached them, and also the *Micro Lab* in whose name the forged reports were issued. Consequently, the Crime was registered.

4. The allegation in Crime 484/20, is that the applicant had similarly collected samples for COVID-19 tests from persons, as the collecting agent of *R-CELL Diagnostic and Research Centre*, ('*R-CELL*' for short) Kozhikode, yet another

authorised Lab, and after having collected samples and taken money, issued fake reports in the name of *R-CELL*. A complaint was filed by Russel Mohammed, the Managing Partner of *R-CELL*, stating that the applicant had on 03/09/2020, collected sample of a person named Haneefa Pottammal Mohammed, and send the said sample together with other samples to *R-CELL* for examination. The said person had tested positive for COVID-19, and as required, the information was communicated to the DMO and DSO, and the information was also uploaded to the State Government Portal. But when the authorities contacted the infected person Haneefa, he informed them that the applicant has issued a negative report to him. The applicant had in fact issued a fake

negative report. The complainant states that the applicant has issued several such forged and fake reports. In consequence of this complaint, Crime 484/2020 was also registered against the applicant and others for similar offences as alleged in the earlier Crime.

5. All the co-accused except the applicant were arrested. They were subsequently released on regular bail. The applicant apprehends that he too may be arrested, and hence, he has approached this court for pre-arrest bail, after his applications were dismissed by the Sessions Court.

6. The applicant's version is that he is innocent, and has not committed any forgery as alleged. It is stated that the applicant's Lab has a very good reputation, and has been

functioning for the last 25 years. There has been no complaints about his Lab, so far. On 13/09/2020, a person named Abdul Azeez Poyyakodi, employed in Dubai, wanted to get a RTPCR test for detecting COVID-19 conducted, as he was travelling to Dubai on 16/09/2020. The sample provided by him was forwarded to *Micro Lab* for examination. On 14/09/2020, *Micro Lab* forwarded an report stating that no SARS-CoV-2 was detected in the sample provided. That report was sent to Abdul Azeez, and he made preparations to travel on the 16/09/2020. However, the applicant's Lab yet received another report from *Micro Lab* stating that Azeez has been tested positive. That report was also forwarded to Azeez by the person in charge of the Lab. The health authorities had been

intimated, and hence they directed Azeez to go on quarantine, and prevented him from travelling. Abdul Azeez felt that there was something wrong with the report, as he was asymptomatic, and hence got himself tested at Valluvanad Hospital, Ottapalam, on 16/09/2020. He was found to be negative for COVID-19, vide Annexure 2 report. Azeez made a complaint before the authorities against *Micro Lab*. He alleged that there was negligence on their part and hence he was prevented from going abroad, due to the false positive report issued by them. Anticipating that he may proceed against them, *Micro Lab* filed the complaint against the applicant.

7. With regard to the complaint filed by *R-CELL*, the applicant states that the person named Haneefa Pottammal

Mohammed approached the applicant's lab on 04/09/2020 for getting an RTPCR test to rule out SARS-CoV-2. The sample collected at the applicant's lab was forwarded to *R-CELL*. By the end of the day, the result came, confirming that the test for SARS-CoV-2 was positive. Annexure 2 report was forwarded to Haneefa. Suspecting the authenticity of the test, he approached the applicant's lab again, on 05/09/2020, requesting the sample to be taken again repeating the test, as he was asymptomatic. His sample was taken and this time sent to *Micro Lab*. Annexure 3 report from the *Micro Lab* stated that the test for SARS-CoV-2 was negative. But in the meantime, *R-CELL* had already intimated the health authorities about the test result being positive, and Haneefa was asked to go on

quarantine. Haneefa also made a complaint against *R-CELL* about his report going wrong. The complaint filed by Russel Mohammed as Annexure 4 on behalf of *R-CELL* was filed only on 27/09/2020, with ulterior motive to prevent action being take against them for the false report issued by them.

8. Heard the Senior Counsel Sri. P. Vijayabhanu appearing for the applicant under instructions of Adv. B.Premod. Smt. V.Sreeja, the Public Prosecutor, appeared for the State. Records and Case Diary perused. The investigating officer also filed a report.

9. The learned prosecutor submits that the applicant is the person who runs the Lab, and all manipulations are made by him. The lab technicians working as apprentices have given

statement to the effect that the applicant was personally responsible in taking the samples collected at the Lab for being transmitted to *Micro Lab*. They have stated that only a portion of the samples were sent. But they do not know what was done with the samples not sent to Kozhikode. The report of the investigating officer states that the applicant had collected more than 2000 samples, but sent only about 500 of them for testing by the Labs at Kozhikode. This is a strong indication that the applicant was manipulating reports by using the names of the accredited Labs. The report has confirmed the validity of the negative report received from Valluvanad Hospital.

10. On hearing the submissions made by the learned

Senior Counsel Sri. P Vijayabhanu, and the learned prosecutor Smt. Sreeja, and on going through the case diary, I find that there is indication about the complicity of the applicant. But as regards the individual cases involving the tests of Azeez and Haneefa, the complicity of the accused is not so far established. The staff of the applicant have given statements raising doubts about the manner in which the applicant's lab was functioning. The staff engaged by the applicant as apprentices have noticed that the applicant never used to send the entire samples collected in his lab for RTPCR test to the labs at Kozhikode. What did he then do with those samples he did not send to the authorised Labs? This question will have to be clarified by the applicant.

11. Considering the fact that the offences alleged against the applicant does not attract punishment exceeding seven years imprisonment, caution will have to taken while arresting the applicant. The present pandemic situation also requires that an accused involved in offences attracting imprisonment only upto seven years, need not be arrested and confined to custody unless it is essential and imperative to do so. The Hon'ble Apex Court has in *In Re: Contagion of Covid 19 Virus In Prisons ... Petitioner(s) [2021 SCC OnLine SC 376]* observed thus:

“9. As a first measure, this Court, being the *sentinel on the qui vive* of the fundamental rights, needs to strictly control and limit the authorities from arresting accused in contravention of guidelines laid down by this

Court in *Arnesh Kumar v. State of Bihar* (supra) during pandemic.”

In *Arnesh Kumar v. State of Bihar [2014(3) KHC 69 : 2014(8)*

SCC 273], the Apex Court has held thus:

“11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.2. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified subclauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest,

while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished

for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498–A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.”

12. The materials collected so far by the investigating officer do indicate the complicity of the applicant. The accusation is also grave and affects the public health. But taking note of the present pandemic situation, and the need to de-congest the prisons, I find that the applicant need not be

subjected to custodial interrogation. He has no criminal antecedents, and has not been involved in any similar offences.

The possibility of his absconding and fleeing from justice is also to be ruled out. The learned prosecutor submits that the applicant could not be arrested so far because he was on the run. The investigating officer has no case that he was issued notice under section 41A Cr.P.C, and that he did not appear despite being served with such notice. Considering all these facts and circumstances, It would suffice if he is directed to appear before the investigating officer for interrogation and cooperate with the investigation, which mainly depends on documentary evidence. The applicant need not be incarcerated merely to give him a taste of imprisonment.

13. The applications are allowed and the applicant is directed to surrender before the investigating officer within one month, and after interrogation and recovery if any, he shall be released on bail on execution of bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties for like amount each to the satisfaction of the arresting officer, in each of the cases, subject to the following conditions:

1. He shall appear before the investigating officer on all Saturdays between 9:00A.M and 12:00 noon for a period of three months.
2. He shall surrender his passport before the jurisdictional Court within a week after his release on bail, and the same shall be released to applicant by the jurisdictional/

trial court, as and when found necessary, on such conditions as may be imposed by that court. In case he does not have a passport, an affidavit to that effect shall be filed before the jurisdictional court.

3. He shall not tamper with evidence, intimidate or influence witnesses.
4. He shall not get involved in any similar crimes during the currency of the bail.

The breach of the bail conditions shall entail in cancellation of bail, on an application filed by the prosecution before the jurisdictional court.

Sd/-

ASHOK MENON
JUDGE