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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 03RD DAY OF AUGUST 2020 / 12TH SRAVANA, 1942

Bail Appl..No.4459 OF 2020

CRIME NO.1677/2019 OF Museum Police Station , Thiruvananthapuram

PETITIONER/ACCUSED:

	VISHNU GOPALAKRISHNAN, AGED 45 YEARS, S/O.GOPALAKRISHNA PILLAI, VISHNU NIKETH, VALLIKODE, PATHANAMTHITTA, PIN - 689 648.
	BY ADV. SRI.S.RAJEEV

RESPONDENTS:

1	STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.
2	SUNEESH BABU S/O.PARAMESWARAN, VARUVILA PUTHENVEEDU, SARASWATHIPURAM, VENKULAM, EDAVAL VILLAGE, PIN - 695 311.

	SRI.AJITH MURALI, PP
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THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03.08.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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**O R D E R**

**Dated this the 3rd day of August 2020**

This Bail Application filed under Section 438 of the Criminal Procedure Code was heard through Video Conference.

2. The petitioner is the accused in Crime No.1851/2019 of Peroorkada Police Station, Thiruvananthapuram. He is the 2<sup>nd</sup> accused in the above case. Initially, this case was registered at Museum Police Station as Crime No.1677/2019, and the case was subsequently transferred to the Peroorkada Police Station. The first accused is a private limited company, namely Suntec Business Solution Private Limited. The second accused, who is the petitioner herein is the Assistant Manager of the company. Accused numbers 3 to 5 are the Chief Executive Officer, Chief Finance Officer, and Finance Manager of the 1st accused company. The case is registered alleging offences punishable under section 420, 406 r/w 34 IPC.

3. The prosecution case is that the petitioner and other accused committed criminal breach of trust, cheating etc. The defacto complainant is the Manager of FCM Travel Solutions India Pvt. Ltd. The allegation is that the company of the defacto complainant and the accused entered into an agreement in the business of providing foreign exchange services, such as currency notes, travelers' cheque, and traveler's cards. The specific case of the prosecution is that the second accused and the others with intend to obtain wrongful gain and to cause wrongful loss to the defacto complainant, entered into an agreement with the FCM Travel Solutions (India) pvt ltd in the business of providing foreign exchange services such as currency notes, traveler cheque, and traveler cards. In the agreement, it is shown that the accused 2 and 5 are having the authority to transact foreign exchange between companies. In pursuance of the authorization letter and agreement the second accused from 06.04.2019 till 25.06.2019, on different occasions, transacted foreign currency worth Rs.3,43,54,184/- and after that only repaid Rs.2,54,44,914/- to the FCM Travel Solutions

(India) Pvt. Ltd. When the balance outstanding (amounting to the tune of Rs.89,69,270/-) is demanded, the accused 2 to 5 asked them to approach the first accused, that is, the company. Subsequently, the representatives of FCM Travel Solutions (India) Pvt.Ltd approached the accused, the CEO of the company, and the accused 1, 4 & 5 stated that the second accused had transacted the same without the knowledge or consent or concurrence of the company. Thereby the defacto complainant company has incurred a loss of Rs.89,69,270/- in total. It is the case of the prosecution that certain conditions of the agreement are violated. It is also the case of the prosecution that some amount is due to the complainant.

4. This bail application is filed with the defacto complainant as 2<sup>nd</sup> respondent. It is true that in **Kunhiraman v. State of Kerala (2005(2) KLT 685)**, this court observed that if the defacto complainant files an impleading petition in a bail application, there is no bar in hearing the defacto complainant while considering a bail application. The relevant paragraph of the above judgment is extracted hereunder:

“17. Summing up my discussions I hold that there is no legal bar for hearing the de facto complainant in an application for anticipatory bail. Theoretically of course, there is no provision in the Code for impleading a party, but nothing prevents the court from hearing the de facto complainant or aggrieved in an application for anticipatory bail. In fit cases, the court can afford to the aggrieved or the de facto complainant an opportunity of hearing. Technicalities shall not baffle the judicial mind. It cannot hinder course of justice, either. Principles of natural justice shall not remain a mere paper-philosophy. If adhered to, it can never spill over and tend to spoil justice delivery system. Court can hear the aggrieved and not bang its doors to the one who knocks. The court exists to redress the grievance that of the accused or the aggrieved. After all, it is all for the purpose of taking a right decision in the case.”

5. With great respect, I agree with the above proposition laid down by this court. If the defacto complainant files an impleading application in a bail application, the court should hear him/her before passing final orders. But whether in all cases, the bail court should ask the accused to implead the defacto complainant and then issue a notice to the defacto complainant is a question to be decided. There are specific provisions in the Criminal Procedure Code by which notice is to be issued to the defacto complainant while considering bail application. Section 439(1-A) Cr.P.C says that the presence of

the informant or any person authorised by him shall be obligatory at the time of hearing of an application for bail to the person charged under Section 376(3) or Section 376-AB or Section 376-DA or Section 376-DB of IPC. This provision is inserted in the Code by the Criminal Law (Amendment) Act 2018. But no provision is added in the Code by the above amendment to issue notice to the defacto complainant in cases where other offences in the Penal Code are alleged.

6. In the Criminal Procedure Code, a proviso is added to Section 372 IPC by which the victim, in a case, can challenge an acquittal order passed by a criminal court. Similarly, in Muslim Women (Protection of Rights on Marriage), Act, 2019 there is a specific provision in which it is clearly stated that the notice should be issued to the victim while considering a bail application by a Magistrate. In such circumstances, when the legislature thinks that only in certain cases notice is necessary to the victims/defacto complainants while considering the bail applications by courts, the court need not issue a notice to the defacto complainants/victims in all bail applications. Simply

because the case is registered under Section 420 IPC or 406 IPC, the bail court need not issue notice to the defacto complainant unless there is a special reason for the same. Similarly, in all cases in which monetary dispute is there, the bail court need not issue a notice to the defacto complainant. Bail court is not an executing court to settle money claims. When the legislature says that notice to the defacto complainant is necessary only in certain cases, the court need not issue a notice to the defacto complaint in all bail applications. It is the legislative mandate to decide bail applications in such cases after hearing the Public Prosecutor. Of course, there is a discretion to the bail court to decide whether notice is to be issued to the defacto complainant/victims in the facts and circumstances of a particular case. Considering the facts and circumstances of each case, the court can decide whether the notice is to be issued to the defacto complainant. Simply because the case is registered under Section 420 IPC or a monetary dispute is involved, in all bail applications, the notice need not be issued to the defacto complainant while considering the bail applications by the

courts. The legislature insists that a bail application should be considered by the court after hearing the Public Prosecutor. When such a mandate is there from the legislature, the court need not issue a notice to the defacto complainant unless the facts and circumstances of that case compel the court to issue a notice to the defacto complainant. I make it clear that there is no prohibition in issuing notice to the defacto complainant while considering the bail application. I also make it clear that there is no prohibition in hearing a defacto complainant if a defacto complainant/victim file a petition for impleading in the bail application and request for a hearing while considering the bail application. In such cases as held in **Kunhiraman's** case mentioned supra, the court can allow the same. But the court need not issue a notice to the defacto complainant suo motu or direct the accused to implead the defacto complainant in a bail application except in cases in which the Criminal Procedure Code and other Acts insist so or the bail court feel that the defacto complainant is also to be heard in the facts and circumstances of that case. In the facts and circumstances of this case, I am not



issuing notice to the 2<sup>nd</sup> respondent in this case while considering this bail application.

7. The learned Public Prosecutor conceded in his statement filed in this bail application that the other accused in this crime are already on bail.

8. The admitted case is that there is a violation of an agreement entered between the defacto complainant and the accused. It is also the prosecution case that there is some amount due to the defacto complainant from the accused. Whether the violation of an agreement or non-payment of balance amount due to the defacto complainant amounts to an offence under Section 420 IPC or 406 IPC, is a matter to be investigated by the investigating officer. For that purpose, the custodial interrogation of the petitioner may not be necessary. In such circumstances, considering the entire facts and circumstances of the case, I think this bail application can be allowed.

9. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the

novel Corona Virus Pandemic, the Hon'ble Supreme Court in **Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition(C) No.1 of 2020)** and a Full Bench of this Court in **W.P(C)No.9400 of 2020** issued various salutary directions for minimizing the number of inmates inside prisons.

10. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in **Chidambaram. P v Directorate of Enforcement (2019 (16) SCALE 870)**, after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

11. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The petitioner shall appear before the Investigating Officer within ten days from today

and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose to arrest the petitioner, he shall be released on bail executing a bond for a sum of Rs.50,000/-(Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the officer concerned.

3. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner shall co-operate with the investigation and shall not, directly or indirectly make any inducement, threat or promise 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.

4. The petitioner shall not leave India without permission from the jurisdictional court.

5. The petitioner shall not commit an offence similar to the offence of which he is

accused, or suspected, of the commission of which he is suspected.

6. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to the keeping of social distancing in the wake of Covid 19 pandemic.

7. The petitioner shall appear before the investigating officer on all Mondays and Fridays at 10 am, till the final report is filed in this case.

8. If any of the above conditions are violated by the petitioner, the jurisdictional court can cancel the bail in accordance to law, even though the bail is granted by this court.

**Sd/-**

**P.V.KUNHIKRISHNAN**

**JUDGE**

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