



BA Nos.4911 and 4919 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 18TH DAY OF JULY 2024 / 27TH ASHADHA, 1946

BAIL APPL. NO. 4911 OF 2024

CRIME NO.644/2024 OF Thiruvalla Police Station, Pathanamthitta

PETITIONER/S:

RAJU GEORGE @ N.M. RAJU ,AGED 64 YEARS
NEDUMPARAMBIL GARDENS ,KUTTAPPUZHA P.O THIRUVALLA,
PATHANAMTHITTA, PIN - 689103

BY ADVS.
JAI GEORGE
P.VIJAYA BHANU (SR.)

RESPONDENT/S:

- 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031
- 2 RAJU CHERIAN ,S/O. CHERIAN GEORGE, PUTHOOPARAMBIL, PALLICKACHIRAKAVALA P.O, PAYIPAD, KOTTAYAM DISTRICT-686 537(ADDED AS INTERVENOR AS PER ORDER DATED 19-6-24 IN CRL MA 1/24)

BY ADVS.
SUSANTH SHAJI
ANWIN JOHN ANTONY
SIDHARTH O.
ALBIN A. JOSEPH

Sr PP Smt Seetha S

THIS BAIL APPLICATION HAVING FINALLY HEARD ON 9.07.2024 ALONG WITH BA 4919/2024, THE COURT ON 18.7.2024 PASSED THE FOLLOWING:



BA Nos.4911 and 4919 of 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 18TH DAY OF JULY 2024 / 27TH ASHADHA, 1946

BAIL APPL. NO. 4919 OF 2024

CRIME NO.644/2024 OF Thiruvalla Police Station, Pathanamthitta

PETITIONER/S:

- 1 GRACE RAJU, AGED 57 YEARS, NEDUMPARAMBIL GARDENS, KUTTAPPUZHA P.O THIRUVALLA, PATHANAMTHITTA, PIN - 689103
- 2 ALAN GEORGE, AGED 33 YEARS, NEDUMPARAMBIL GARDENS, KUTTAPPUZHA P.O THIRUVALLA, PATHANAMTHITTA, PIN - 689103
- 3 ANSON GEORGE, AGED 31 YEARS NEDUMPARAMBIL GARDENS, KUTTAPPUZHA P.O THIRUVALLA, PATHANAMTHITTA, PIN - 689103

BY ADV JAI GEORGE

RESPONDENT/S:

- 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031
- 2 RAJU CHERIAN, S/O. CHERIAN GEORGE, PUTHOOPARAMBIL, PALLICKACHIRAKAVALA P.O, PAYIPAD, KOTTAYAM DISTRICT. (ADDED AS INTERVENOR AS PER ORDER DATED 19-6-24 IN CRL MA1/24)

BY ADVS.
SUSANTH SHAJI
ANWIN JOHN ANTONY
SIDHARTH O.
ALBIN A. JOSEPH

Sr PP Sri C.S Hrithwik

THIS BAIL APPLICATION HAVING FINALLY HEARD ON 9.07.2024 ALONG WITH BA 4911/2024, THE COURT ON 18.7.2024 PASSED THE FOLLOWING:



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"C.R."

C.S.DIAS,J

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BA Nos.4911 and 4919 of 2024

Dated this the 18th day of July, 2024**COMMON ORDER**

The accused 1 to 4 in Crime No.644/2024 of the Thiruvalla Police Station, Pathanamthitta, have filed these two applications under Section 439 of the Code of Criminal Procedure, 1973. The petitioners are indicted for allegedly committing the offences punishable under Sections 406, 409, and 420, read with Section 34 of the Indian Penal Code, and Section 4, read with Section 22 of the Banning of Unregulated Deposit Schemes Act, 2019 ("BUDS Act", in short).

2. BA No.4911/2024 is filed by the first accused, and BA No.4919/2024 is filed by the accused 2 to 4 in the above crime. The second accused is the wife of the first accused, and the accused 3 and 4 are the sons of the accused 1 and 2. As the bail applications



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arise from the same crime, they are consolidated, jointly heard and disposed of by this common order.

3. The prosecution case, in brief, is that the first accused is the Managing Partner, and the accused 2 to 4 are the Partners of M/s.Nedumparambil Credit Syndicate, Thiruvalla. In furtherance of their common intention, the accused had dishonestly induced the de facto complainant to deposit Rs.15/- Lakh in their firm on the promise that they would pay him 12.5% interest per annum and would return the capital amount as and when requested. However, the accused failed to pay the promised interest and refused to return the capital amount. Thus, the accused have committed the above offences. The petitioners were arrested and remanded to judicial custody on 7.5.2024.

4. Heard; Sri.P.Vijaya Bhanu, the learned Senior Counsel appearing for the petitioners, Smt.Seetha.S. and Sri.C.S Hrithwik, the learned Public Prosecutors and Sri.Susanth Shaji, the learned counsel appearing for the de facto complainant/intervenor.



5. The learned Senior Counsel zealously argued that the petitioners are innocent of the accusations levelled against them. In reality, the de facto complainant had, on his own volition, deposited the money in the firm and was promptly paid the agreed interest. The petitioners have not induced or compelled the de facto complainant to deposit any money in their firm. Due to unforeseen circumstances, the petitioners were precluded from returning the capital amount to the de facto complainant. Nonetheless, the firm is prepared to pay the matured deposit amount to the de facto complainant in a short time. There is no material to prove that the petitioners had the *mens rea* to cheat the de facto complainant when receiving the deposit, whereby none of the offences would stand attracted. The firm has the requisite licence to conduct money lending business under the Kerala Money Lenders Act, 1958. By Annexure A3 order, this Court has stayed further proceedings in another crime registered against the petitioners. The dispute between the parties is purely civil in nature. The offence alleged under the BUDS Act is bailable. The first petitioner is a renal patient and is undergoing treatment. The petitioners have been



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arrested in flagrant violation of the directions laid down by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar & Anr** [(2014) 8 SCC 273] and **Satender Kumar Antil v. Central Bureau of Investigation** [(2022) 10 SCC 51]. The petitioners have been in judicial custody for the last 70 days, and the final report has not been submitted. Even though the offence under Section 409 IPC is attributed against the petitioners, since the provision prescribes punishment from till the rising of the court to imprisonment for life, the maximum period for completing the investigation under Section 167 of the Cr.P.C is only 60 days. Therefore, the petitioners are entitled to be released on compulsive bail. Even otherwise, the petitioners are entitled to be released on bail because the investigation in the case is practically complete, and recovery has been effected. The petitioners are willing to abide by any stringent condition that may be imposed by this Court. Hence, the applications may be allowed.

6. The learned Public Prosecutors strenuously opposed the applications. They submitted that the petitioners have outrightly



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cheated their depositors and siphoned off their hard-earned money. More than 100 crimes have been registered against the petitioners by various Police Stations for committing similar offences. The investigation in all the crimes is at the preliminary stage. If the petitioners are released on bail, they would intimidate the witnesses and inter-meddle with the investigation. The petitioners have received deposits without any proper licence. As Section 409 of the IPC is incorporated, the petitioners are not entitled to statutory bail since the Investigating Officer has 90 days to lay the final report. Hence, the applications may be dismissed.

7. The learned counsel for the intervenor also opposed the application. The intervenor has filed a bail objection report, inter alia, contending that the petitioners have caused wrongful loss to him. They assured him they would pay him interest @ 12.5% per annum on Rs.15/- Lakh. Although the fixed deposit has matured, the accused have failed to return the capital amount. The petitioners have cheated their depositors by accepting deposits without valid permission. The petitioners have permission to only receive deposits from their relatives as per the provisions of the



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Kerala Money Lenders Act, 1958 and the Reserve Bank of India directions. Therefore, the petitioners have also committed the offence under the BUDS Act. Numerous cases have been registered against the petitioners by the Thiruvalla, Pulikeezhu, Elavumthitta, Ranni and Muvattupuzha Police Stations for committing similar offences. The petitioners have committed a serious economic offence. If the petitioners are enlarged on bail, they would undoubtedly sabotage the investigation. Hence, the applications may be dismissed.

8. The points that emanate for consideration in the applications are;

(i) whether the petitioners are entitled to be released on statutory bail, or

(ii) whether the petitioners are otherwise entitled to be enlarged on bail.

Point No.(i)

9. The prosecution case is that the petitioners dishonestly induced the de facto complainant to deposit Rs.15/- lakh on the



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promise to pay him interest @ 12.5% per annum and return the capital amount as and when demanded by him. But, the petitioners failed to pay the agreed interest and return the capital amount. The petitioners are alleged to have committed offences punishable under Sections 406, 409, and 420 r/w Section 34 of the Indian Penal Code and Section 4 r/w Section 12 of the BUDS Act.

10. The principal contention of the learned Senior Counsel for the petitioners was that, other than for the offence under Section 409, all the other offences are punishable for less than seven years. Even under Section 409, the punishment can vary from one day to imprisonment for life. Consequently, the maximum period to complete the investigation under Section 167 Cr.P.C is only 60 days. Therefore, the petitioners are entitled to be released on compulsive bail.

11. The offences under Sections 406 and 420 are punishable for a term which may extend to three years and seven years and/or with a fine or both, respectively. Similarly, the offence under Section 4 of the BUDS Act is punishable for a term which may extend to



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seven years and with a fine. However, the offence under Section 409 is punishable with imprisonment for life or for a term which may extend to ten years and with a fine.

12. Section 409 IPC reads as under:

“409. Criminal breach of trust by public servant, or by banker, merchant or agent.--Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

(emphasis given).

13. Therefore, an accused found guilty of an offence under Section 409 can be sentenced to life imprisonment or imprisonment for a term extending to 10 years and shall also be liable to fine. To put it pithily, the Court may impose a sentence which may extend to 10 years, but in a given case, a sentence of imprisonment for life can also be imposed.



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14. In the context of the claim for default bail, the relevant provisions are sub-sections (1) and (2) of Section 167 of the Code of Criminal Procedure, 1973, which reads as follows:

“167. Procedure when investigation cannot be completed in twenty-four hours.

(1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

PROVIDED that—,

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist



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for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]"

15. The above-extracted provision makes it unquestionably clear that whenever an accused person is arrested and produced before a Judicial Magistrate under sub-section (1) of Section 167 Cr.P.C., the Magistrate may authorise the detention of the accused in such custody, as the Magistrate may think fit, for a term not exceeding 15 days in a whole. However, by the proviso to sub-section (2), the Magistrate may authorise the detention of the accused, otherwise in the custody of the police, beyond 15 days, if



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he is satisfied that adequate grounds exist for doing so. Nevertheless, the Magistrate can only authorise the detention of the accused in custody for a period not exceeding 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years, and in any other case, for a period not exceeding 60 days.

16. The proviso of sub-section (2) of Section 167 Cr.P.C. consists of three parts. The first part, with which we are concerned, mandates that no Magistrate shall authorise detention of the accused in custody, under sub-section (2) (a) for a period not exceeding:

- (i) 90 days where the investigation relates to an offence punishable under death, imprisonment for life or imprisonment for a term of not less than ten years;
- (ii) 60 days where the investigation relates to any other offence.



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17. To put it differently, the period of 90 days applies to cases where the investigation relates to the three categories of offences which are punishable with:

- (i) death,
- (ii) imprisonment for life; or
- (iii) imprisonment for a term of not less than ten years.

18. The moot question is whether, in an offence under Section 409 IPC, the accused can be punished with imprisonment for life or only for a term that may extend to ten years.

19. It is rudimentary that for an offence where minimum and maximum punishments are prescribed, it is the discretion of the court to decide the adequate sentence to be imposed depending upon the facts and circumstances of each case. There can be no dispute that Section 409 permits the accused to be punished with imprisonment for life, which was substituted for “transportation for life” by Act 26 of 1955 w.e.f., 1.1.1956.



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20. In **Rakesh Kumar Paul v. State of Assam** [(2017) 15 SCC 67], the decision which rules the roost, a three-judge Bench of the Honourable Supreme Court has held thus:

“27. It is true that an offence punishable with a sentence of death or imprisonment for life or imprisonment for a term that may extend to 10 years is a serious offence entailing intensive and perhaps extensive investigation. It would, therefore, appear that given the seriousness of the offence, the extended period of 90 days should be available to the investigating officer in such cases. In other words, the period of investigation should be relatable to the gravity of the offence – understandably so. This could be contrasted with an offence where the maximum punishment under the IPC or any other penal statute is (say) 7 years, the offence being not serious or grave enough to warrant an extended period of 90 days of investigation. This is certainly a possible view, and indeed, the Cr.P.C makes a distinction in the period of investigation for the purposes of ‘default bail’ depending on the gravity of the offence. Nevertheless, to avoid any uncertainty or ambiguity in interpretation, the law was enacted with two compartments. Offences punishable with imprisonment of not less than ten years have been kept in one compartment equating them with offences punishable with death or imprisonment for life. This category of offences undoubtedly calls for deeper investigation since the minimum punishment is pretty stiff. All other offences have been placed in a separate compartment, since they provide for a lesser minimum sentence, even though the maximum punishment could be more than ten years imprisonment. While such offences might also require deeper investigation (since the maximum is quite high) they



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have been kept in a different compartment because of the lower minimum imposable by the sentencing court, and thereby reducing the period of incarceration during investigations which must be concluded expeditiously. The cut-off, whether one likes it or not, is based on the wisdom of the Legislature and must be respected.”

(emphasis supplied)

21. It is also germane to extract the minority concurring view in **Rakesh Kumar Paul's** case, which reads as follows:

"84.2. Section 167(2)(a)(i) of the Code is applicable only in cases where the accused is charged with (i) offences punishable with death and any lower sentence; (b) offences punishable with life imprisonment and any lower sentence and (c) offences punishable with minimum sentence of 10 years;

84.3. In all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed.

85. On issues 2 to 4, I agree and concur with my learned brother Lokur J. and with due respect I am unable to agree with learned brother Pant J."

22. In view of the above discussions and that Section 409 IPC permits the court to sentence an accused to imprisonment for life, and the ratio in **Rakesh Kumar Paul's** case, that is, the



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period of investigation should be relatable to the gravity of the offence, there is no room for any doubt that for an offence under Section 409 IPC, the period for filing the charge sheet is extended up to 90 days. Therefore, I find Point No. (i) against the petitioners and hold that they are not entitled to statutory bail.

Point No.(ii)

23. On a scrutiny of the materials placed on record, it is seen that petitioners are the accused in over 100 crimes registered by the different Police Stations in the State, for allegedly committing similar offences and cheating their depositors with more than Rs.8.2/- crore. It is reported that the investigation in the 100 crimes is only at a preliminary stage. The prosecution also apprehends that, if the petitioners are released on bail, there is every likelihood of them tampering with the evidence and intimidating the witnesses.



24. In **Prasanta Kumar Sarkar v. Ashis Chatterjee** [(2010) 14 SCC 496], the Honourable Supreme Court has laid down broad parameters for the courts, by holding thus:

“9..... It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail”.

25. In **Jagan Mohan Reddy Y.S. v. Central Bureau of Investigation** [(2013) 7 SCC 439], the Hon'ble Supreme Court has emphatically held that economic offences constitute a separate class and need to be visited with a different approach when it comes to the question of bail. Economic offences that involve deep-rooted conspiracies and huge loss of public funds need to be viewed seriously and considered grave offences affecting the country's economy as a whole.



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On an overall consideration of the facts, rival submissions made across the Bar and the materials placed on record and on comprehending the nature, gravity and seriousness of the economic offences alleged against the petitioners, the prima facie materials that show the petitioners' involvement in the crime, that the investigation in the case is at its nascent stage, there are nearly 100 cases registered against the petitioners, and that there is a likelihood of the petitioners intimidating the witnesses and tampering with the evidence, I am not convinced that the petitioners are entitled to be released on bail at this stage. Therefore, I find Point No. (ii) also against the petitioners.

Resultantly, the bail applications are dismissed.

SD/-

sks/15.7.2024

C.S.DIAS, JUDGE