

BAIL APPL. NO. 4939 OF 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 10<sup>TH</sup> DAY OF JULY 2024 / 19<sup>TH</sup> ASHADHA, 1946

BAIL APPL. NO. 4939 OF 2024

CRIME NO.544/2024 OF NEDUMBASSERY POLICE STATION, Ernakulam

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PETITIONER/ACCUSED No.3 :-

SAJITH SHYAM, AGED 43 YEARS  
S/O SHYAM RAJ, GCRA C BLOCK-283, KUMMENCHERRY HOUSE,  
KUMMENCHERRY - PIPE LINE ROAD, CHENGAMPUZHA NAGAR,  
KALAMASERRY, THRIKKAKARA NORTH, PIN - 682 021 (The name of the  
petitioner mentioned in the BA 'Ajith Shyam' is corrected and  
substituted as 'Sajith Shyam' as per order dated 11.6.2024 in  
Cr1.M.A 1/2024)

BY ADVS.  
M.VIVEK  
RENEETA VINU

RESPONDENT/COMPLAINANT :-

STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031

SRI.C.S.HRITHWIK, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
10.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**ORDER****Dated this the 10<sup>th</sup> day of July, 2024**

The third accused in Crime No.544/2024 of the Nedumbassery Police Station, Ernakulam, has filed this application under Section 439 of the Code of Criminal Procedure, 1973. The accused in the crime are alleged to have committed the offences punishable under Section 370 r/w Section 34 of the Indian Penal Code and Section 19(a)(b)(c) & (d) of the Transplantation of Human Organs and Tissues Act, 1994.

2. The gravamen of the prosecution case is that, the accused, the architects of an international human organ harvesting operation, in furtherance of their common intention, enticed financially disadvantaged individuals hailing from various parts of the country, Rs.6/- lakh each to donate their kidneys, after making them believe that the sale of organs was legal, trafficked them to Iran, removed their kidneys, and got the organs transplanted to patients in India, and thereafter, exploited and cheated the donors by not paying the

promised money. The patients in need of organs, transferred the money to the bank account of the third accused, who was fully conscious that the first accused was the kingpin in orchestrating the crime, who in turn channelled the money to the bank account of Stemma Club, a medical tourism organisation of the first accused. The fourth accused identified potential donors and acted as an agent for accused Nos.1 and 2. Thus, the accused have committed the above offences.

3. Heard; Sri. M.Vivek, the learned counsel appearing for the petitioner and Sri.C.S.Hrithwik, the learned Senior Public Prosecutor.

4. The learned counsel for the petitioner zealously argued that the petitioner is innocent of the accusations levelled against him. The petitioner is only a childhood friend of the first accused, and he had only given his bank account details to the first accused, and certain persons transferred some money to his bank account and he retransferred the money to the organisation of the first accused. The petitioner is not a beneficiary of the proceeds of the crime. The

petitioner does not have any criminal antecedents. The petitioner has been in judicial custody since 24.05.2024; the investigation in the case, so far as the petitioner is concerned, is practically complete, and the recovery has been effected. Hence, the petitioner may be enlarged on bail.

5. The learned Public Prosecutor strenuously opposed the application. He submitted that the accused have committed an organised international crime. There are incriminating materials to substantiate the petitioner's involvement in the crime. The investigation in the case is only at its preliminary stage. The first accused is still in safe heavens abroad. The crime requires an in-depth investigation. The National Investigating Agency proposes to take over the investigation since the crime has its roots in different States and foreign countries. The accused have international connections and are influential. If the petitioner is released on bail, he is likely to sabotage the entire investigation and flee from justice. The Investigating Officer has filed a bail objection report, *inter alia*, contending that the petitioner has confessed that he

accepted money from the patients and transferred the same to the bank account of Stemma Club of the first accused. The financial transactions stand corroborated with the bank accounts of the accused. The petitioner is the connecting link with the first accused and the patients. In the same way, the call data records prove that the accused were in frequent contact with each other. The investigation has unveiled that a human organ racket is being conducted in the Country, and several other persons are involved in the conspiracy under the pretext of medical tourism. If the petitioner is released on bail, it would send a wrong message to society. Hence, the application may be dismissed.

6. The prosecution allegation against the petitioner is that he was the pivotal link between the first accused, the donors and the patients in need of kidneys. The patients had transferred funds to the petitioner's bank account, and the money was re-transferred to the bank account of the medical tourism organisation of the first accused named Stemma Club. The petitioner and the other accused exploited the donors by promising them Rs.6/- lakh as

consideration for their kidneys, thereafter, trafficked them to Iran, and removed their kidneys, but cheated them by refusing to pay the promised amount.

7. On a careful scrutiny of the case diary and the materials placed on record, it can be seen that some of the donors had transferred money to the petitioner's bank account, who retransferred money to the bank account of Stemma Club. The call data records also show that the petitioner had mobile phone communications with several persons.

8. The Parliament, after considering a spate of reports highlighting the flourishing human organ trade in India and the consequential exploitation of the economically vulnerable segments of the society through organ removal, and illegal transplants, for prohibiting the unethical practice, enacted the Transplantation of Human Organs and Tissues Act, 1994, a comprehensive legislation aimed to curb the commercial organ dealings. However, it is reported that a gap exists between the Act's intended objectives and its actual implementation. Organ trafficking is an organised

crime. It is widespread both within the Country and internationally for multiple reasons, mainly due to the substantial demand for human organs, which outnumber its legal availability.

9. If the prosecution allegation is true, the case on hand exemplifies the modus operandi employed by the accused to conduct an inter-country organised crime by circumventing the laws of our Country and trafficking the donors abroad, extracting and harvesting their organs, and then importing the organs to Country for transplantation. This is, perhaps, just the tip of the iceberg. The accusations depict a serious cross-border crime warranting an in-depth investigation. On considering the deep-rooted tentacles of the crime and the vast network of the accused, this Court has no doubt that the matter needs to be investigated by the National Investigation Agency, especially since national security is involved and innocent persons are being trafficked to a foreign country for organ harvesting.

10. Whether the petitioner has benefitted from the transaction is a matter to be investigated and ultimately decided at the time of

trial. The materials on record, prima facie, establish the petitioner's involvement in the crime.

11. In **Prasanta Kumar Sarkar v. Ashis Chatterjee** [(2010) 14 SCC 496], the Honourable Supreme Court has laid down the following broad parameters while considering a bail application, namely:

"9.....However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. 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".

12. Likewise, in **Gurucharan Singh Others v. State (Delhi Administration)** [(1978) 1 SCC 118], the Honourable Supreme



Court observed that the larger interests of the public or the State must be considered when considering an application for bail.

13. Furthermore, in **Ash Mohammad v. Shiv Raj Singh @ Lalla Babu & Another** [(2012) 9 SCC 446], the Honourable Supreme Court has opined that societal concern has to be kept in juxtaposition with individual liberty and social concern deserves to be given priority over lifting the restriction on liberty of the accused.

14. The law has thus crystalised that while deciding an application for bail under Section 439, the courts are obliged to look into the nature, gravity and seriousness of the crime, the potential severity of the punishment that is likely to be imposed, the character, behaviour and standing of the accused, the prosecution's legitimate apprehension regarding the tampering of evidence, the flight risk of the accused and whether releasing the accused on bail would have a deleterious impact on the society.

15. Considering the facts and the materials placed on record and comprehending the grave nature of the cross-border crime, the prima facie materials that establish the petitioner had monetary

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transactions and frequent mobile phone communications with the first accused, who is absconding, and the investigation into the crime is only at a nascent stage, I don't find any convincing ground to enlarge the petitioner on bail. The application is meritless and is only to be dismissed.

Resultantly, the application is dismissed.

Sd/-

**C.S. DIAS, JUDGE**

jvt/10.7.2024

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