

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 30TH DAY OF AUGUST 2019 / 8TH BHADRA, 1941

Bail Appl..No.6051 OF 2019

CRIME NO.429/2019 OF CBCID, THIRUVANANTHAPURAM,
Thiruvananthapuram

PETITIONER/S:

SAFEER.D, AGED 26 YEARS
S/O. DAVOOD. M., PARANGIMAMVILA VEEDU,
VATTAKARIKKAKOM, K. T. KUNNU P.O., KALLARA,
THIRUVANANTHAPURAM.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT/S:

- 1 THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM - 682 031.
- 2 THE STATION HOUSE OFFICER,
MEDICAL COLLEGE POLICE STATION,
THIRUVANANTHAPURAM - 695 001.
- 3 THE DETECTICE INSPECTOR,
CBCID, THIRUVANANTHAPURAM - 695 001.
- 4 THE COMMISSIONER OF POLICE
THIRUVANANTHAPURAM - 695 001.
- 5 THE ADDITIONAL DIRECTOR OF POLICE (CRIME
BRANCH), THIRUVANANTHAPURAM - 695 001.

OTHER PRESENT:

SMT.V.SREEJA, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
30.08.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Bail Appl..No.6051 OF 2019

O R D E R

The petitioner is the 4th accused in Crime No. 429 of 2019 of Medical College Police Station, registered for the offences punishable under Sections 406 and 420 read with Section 120 B IPC and Section 66 of the Information Technology Act. The above Crime was re-registered as Crime No.429/CB/TVPM/D/2019.

2. The prosecution allegation can be briefly stated as follows:-

Accused Nos. 1 to 3 were the candidates for the post of Civil Police Officer. The Kerala Public Service Commission conducted the written examination on 22-7-2018. The examination was in between 2 p.m. and 3.15 p.m. on that day. The 4th and the 5th accused

Bail Appl..No.6051 OF 2019

supplied answers to accused Nos. 1 to 3 through the respective mobile numbers. Eventually, when the result was published, the first and the 2nd accused were respectively the 1st and the 2nd rank holders and the 3rd accused was the 28th rank holder in the list.

3. In connection with Crime No. 1483 of 2019 of Cantonment Police Station, search was conducted in the unit office of the Student Federation of India, situated in the premises of University College, Trivandrum. In the search, answer sheets were recovered. The house search of accused Nos. 1 and 3 herein also resulted in the recovery of answer sheets of the PSC examinations. Therefore, preliminary enquiry was conducted. Thereafter, the above crime was registered. It is alleged that the 4th and the 5th accused, in pursuance to the conspiracy of all the accused, furnished the answers to accused Nos. 1 to 3 through their mobile phones and

Bail Appl..No.6051 OF 2019

thus, the accused Nos. 1 to 3 could write the correct answers in the examination.

4. The petitioner has filed this application under Section 438 Cr.P.C.

5. Heard.

6. The learned Public Prosecutor has opposed the application.

7. The learned counsel for the petitioner has submitted that the petitioner is innocent and that the prosecution could not state as to how the petitioner could be in possession of the answers and in the said circumstances, the custodial interrogation of the petitioner is not necessary in this case.

8. It appears from the materials that the 4th accused

Bail Appl..No.6051 OF 2019

supplied answers to the first accused. The learned Public Prosecutor, after perusing the Case Diary, has submitted that 94 messages were received by the first accused from the mobile phone of the 4th accused. It appears that the accused Nos. 1 to 3 could manage to take their mobile phones to the examination hall.

9. The learned Public Prosecutor has submitted that the prosecution could not so far find out as to how the 4th and the 5th accused could collect the questions and answers and hence the custodial interrogation of accused Nos. 4 and 5 is necessary for the progress of investigation of the case.

10. It appears from the materials that the answers were sent to the mobile phones of accused Nos. 1 to 3 from the mobile phones of A4 and A5. It further appears that the fact as to who handed over the questions and answers to the 4th and the 5th accused is a fact which

Bail Appl..No.6051 OF 2019

is exclusively within the knowledge of accused Nos. 4 and 5 . Therefore, the custodial interrogation of the 4th and the 5th accused is absolutely necessary for the progress of investigation of the case. It is only after the custodial interrogation, the Investigating Officer will be able to get the identity of the person/persons who had also taken part in the conspiracy by providing question papers and answers to the 4th and the 5th accused. The question papers of Public Service Commission, in respect of a particular examination, will not be normally available outside the examination hall till the completion of the examination on that particular date. In this case, it appears that the answers relating to the questions asked in the examination conducted by the Public Service Commission from 2 p.m. to 3.15 p.m. on 22-07-2018 could be obtained by accused Nos. 1 to 3 as transmitted by accused Nos. 4 and 5 over mobile phones. It appears that without the aid and assistance of other persons, who had access to the

Bail Appl..No.6051 OF 2019

question papers, it was hardly possible for accused Nos. 4 and 5 to get the question papers and answers. Therefore, the custodial interrogation of the petitioner is absolutely necessary for the progress of investigation of this case. It appears that the investigation cannot be progressed even to an inch without the custodial interrogation of accused Nos. 4 and 5. Even then, it is not discernible as to why they are not yet arrested by the Investigating Officer. The modus operandi involved in this case impels this Court to think that a very efficient and wider investigation, at least with regard to the recent appointments, is necessary to regain the trust of the public in the Public Service Commission Examinations. In such a scenario, if the petitioner is granted the relief under Section 438 Cr.P.C., that will adversely affect the progress of investigation of the case. Considering the facts and circumstances of the case, as discussed above, I

-: 8 :-

Bail Appl..No.6051 OF 2019

am of the view that this is not a fit case where an order under Section 438 Cr.P.C. in favour of the petitioner will be justified.

In the result, this application stands dismissed. However, the petitioner is directed to surrender before the Investigating Officer within ten days, if not arrested in the meantime.

Sd/-

B. SUDHEENDRA KUMAR, JUDGE.

Ari/