



2025:KER:46365

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS
THURSDAY, THE 26TH DAY OF JUNE 2025 / 5TH ASHADHA, 1947
BAIL APPL. NO. 7487 OF 2025
CRIME NO.449/2024 OF MARADU POLICE STATION, ERNAKULAM
AGAINST THE ORDER DATED 17.03.2025 IN BAIL APPL.
NO.3848 OF 2024 OF HIGH COURT OF KERALA
PETITIONERS/ACCUSED NOS.1 TO 3:

- 1 SHAWN ANTHONY
AGED 31 YEARS
S/O. K.J ANTHONY,
KAKKITHARA HOUSE, 146A,
ARAMANA LANE, OPP. LOURDES HOSPITAL,
CHITTOOR ROAD, VADUTHALA,
ERNAKULAM., PIN - 682023
- 2 SOUBIN SHAHIR
AGED 41 YEARS
S/O BABU SHAHIR,
ALANGAT HOUSE,
HOUSE NO. 43/2302E, SRM ROAD,
ERNAKULAM NORTH, ERNAKULAM, PIN - 682018
- 3 BABU SHAHIR
AGED 67 YEARS
ALANGAT HOUSE,
HOUSE NO. 43/2302E, SRM ROAD,
ERNAKULAM NORTH, ERNAKULAM, PIN - 682018

BY ADVS.
P.VIJAYABHANU (SR.)
SRI.THOMAS J.ANAKKALLUNKAL
SMT.ANUPA ANNA JOSE KANDOTH
SHRI.JAYARAMAN S.
SMT. DHANYA SUNNY
SMT. ANN MILKA GEORGE
SMT.SHERIN RACHEL SANTHOSH



2025:KER:46365

B.A. No.7487 of 2025

-:2:-

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
 REPRESENTED BY PUBLIC PROSECUTOR,
 HIGH COURT OF KERALA, PIN - 682031**

- 2 SIRAJ VALIYATHURA HAMEED
 AGED 47 YEARS
 S/O. HAMEED,
 SIRAJ MANZIL, CHANDIROOR P O AROOR,
 ALAPPUZHA, KERALA PIN- 688537**

**BY ADVS.
SHRI.SAIBY JOSE KIDANGOOR
SHRI.BENNY ANTONY PAREL
SMT.PRAMITHA AUGUSTINE
SMT.AFSANA KHAN
SHRI.SREERAJ S. RAJARAM
SMT.SNEHA J.
SHRI.ADARSH PADMANABHAN
SHRI.AMAL DILEEP**

OTHER PRESENT:

**SMT. SREEJA V.,
PUBLIC PROSECUTOR**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
26.06.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**



2025:KER:46365

B.A. No.7487 of 2025

-:3:-

BECHU KURIAN THOMAS, J.

B.A. No.7487 of 2025

Dated this the 26th day of June, 2025

ORDER

This is an application seeking pre-arrest bail filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS').

2. Petitioners are accused 1 to 3 in Crime No.449 of 2024 of Maradu Police Station, Ernakulam, registered for the offences punishable under Sections 120B, 406, 420 and 468 r/w Section 34 of the Indian Penal Code, 1860 (for short, 'IPC').

3. According to the prosecution, the accused had conspired to cheat the defacto complainant by inducing him to invest Rs. 7 Crores in the partnership business of the accused, promising him a return of 40% of the profit generated from a movie by the name 'Manjummal Boys'. Pursuant to an agreement executed between the parties, the defacto complainant invested a total amount of Rs.7 Crores. Despite the tremendous success of the movie, the accused did not pay the percentage of profit due as per the agreement and thereby caused a loss of Rs.47 Crores and thus committed the offence of cheating and criminal breach of trust.



2025:KER:46365

B.A. No.7487 of 2025

-:4:-

4. Sri. P. Vijayabhanu, the learned Senior Counsel, instructed by Sri. Thomas J. Anakkallunkal, the learned counsel for the petitioners, submitted that the entire prosecution allegations are false and that a pure commercial dispute is being attempted to be raised as a criminal case for the purpose of compelling payment of amounts allegedly due to the defacto complainant. It was also submitted that the relationship between the petitioners and the defacto complainant is covered by Annexure-A2 agreement, wherein the rights of the parties are specifically stipulated therein, including the manner in which the profits should be distributed. It was also pointed out that there is a dispute resolution clause, which provides for the appointment of an Arbitrator in the event of a dispute between the parties. Notwithstanding the aforesaid terms, an FIR has been lodged pursuant to a private complaint, which has been referred for investigation. According to the learned Senior Counsel, petitioners are willing to abide by any conditions that may be stipulated.

5. Smt. Sreeja V., the learned Public Prosecutor, on the other hand, submitted that the allegations relate to a serious offence, which requires custodial interrogation and that petitioners' were served with notices for their appearance under Section 35(3) of the BNSS, and it is at that juncture that they have approached this Court seeking anticipatory bail. The learned Public Prosecutor also pointed



2025:KER:46365

B.A. No.7487 of 2025

-:5:-

out that the investigation conducted so far has revealed that the accused has prima facie committed the offences alleged, and that they are attempting to cover up the offence committed by them under the guise of a civil dispute, and their attempt is only to delay repayment of the amounts due to the defacto complainant by resorting to civil proceedings, which would take a long time for resolution.

6. Sri. Saiby Jose Kidangoor, the learned counsel for the defacto complainant, on the other hand, submitted that the petitioners had produced the movie without any investment from their side, contrary to the promise made to the defacto complainant and pledged the movie instead of making any financial contribution. It was submitted that when petitioners ought to have contributed Rs.15 Crores and the defacto complainant Rs.7 Crores, the petitioners have not made any contribution and instead diverted amounts for their personal use. It was also submitted that large amounts are due to the defacto complainant since the movie was a box office hit and its collection had reached one of the highest ever for a malayalam movie. The learned counsel further submitted that if custodial interrogation is not permitted, it will be hamper the investigation and cripple it, and the Investigating Officer will be left with no means to unravel the truth of the allegations.

7. I have considered the rival contentions.



2025:KER:46365

B.A. No.7487 of 2025

-:6:-

8. Petitioners had approached this Court in Crl.M.C. No.4212 of 2024 and Crl.M.C. No.4169 of 2024 to quash the proceedings. However, by order dated 22.05.2025, a learned Single Judge dismissed the petitions after observing that in the objection filed by the Investigating Officer to an earlier bail application filed before this Court, it was stated that out of the amount invested by the defacto complainant, a portion was diverted to the personal accounts of the accused, and since that is a matter which has to be investigated, the FIR disclosed the commission of a cognizable offence.

9. In this context it has to be mentioned that an earlier bail application was filed by the petitioners as B.A. No.3848 of 2024, which was disposed off by another learned Single Judge of this Court, giving the petitioners the liberty to file a fresh bail application if the petitions under Section 482 of the Code of Criminal Procedure becomes adverse to them. Thus, after the dismissal of Crl.M.C. No. 4212 of 2024 and Crl.M.C No. 4169 of 2024, this bail application was filed.

10. The offence alleged against the petitioners are primarily those under Sections 406 and 420 of IPC. There is an allegation under Section 468 IPC as well. The relationship between the parties is covered by Annexure-A2 agreement, which provides for the mode in which investments are to be made by the defacto



2025:KER:46365

B.A. No.7487 of 2025

-:7:-

complainant, the manner in which the derivative rights should be exploited, apart from sharing of revenue and profits. If there are any disputes between the parties, the terms of the agreement provide for an arbitration clause as well. Thus, the relationship between the parties primarily falls in the realm of a commercial transaction, and the dispute that arises within it, falls undoubtedly in the commercial sphere.

11. Notwithstanding a dispute falling in the commercial sphere, there can be instances where both commercial dispute as well as a criminal offence can arise. Since a learned Single Judge of this Court has already refused to quash the proceedings, it cannot be held that this is purely a commercial dispute. An element of criminality can be said to be existing. However, the question before this Court is whether the same warrants custodial interrogation.

12. In ***Sushila Aggarwal and Others v. State (NCT of Delhi) and Another***, [2020 (5) SCC 1], it was held that while considering whether to grant anticipatory bail or not, Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case. Grant of anticipatory bail is a matter of discretion and the kind of conditions to be imposed or not to be imposed are all dependent on facts of each case, and subject to the discretion of the



2025:KER:46365

B.A. No.7487 of 2025

-:8:-

court.

13. Since primarily, distribution of profits and the mode of investment carried out by parties to the agreement are the source of this dispute, I am of the view that those are all governed by documents. Though it was pointed out by the learned Public Prosecutor that there was diversion of funds to the personal accounts of the accused, the question whether those will attract the offence of cheating or criminal breach of trust will have to be probed. However, custodial interrogation is not necessary in every instance.

14. In ***Ashok Kumar v. State of Union Territory Chandigarh*** [2024 SCC OnLine SC 274], it has been held that a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient and that the State would have to show or indicate more than prima facie case as to why custodial interrogation of the accused is required for the purpose of investigation.

15. In the instant case, already an arbitration dispute is pending, and a former Judge of this Court has been agreed by both parties to be the Arbitrator as evident from Annexure-A16 reply notice.

16. In this context, it needs to be noted that a mere breach of contract cannot amount to an offence under Section 406 or



2025:KER:46365

B.A. No.7487 of 2025

-:9:-

420 of IPC in the absence of any fraudulent or dishonest intention from the very beginning as held in ***Sarabjit Kaur vs State Of Punjab and Another*** [(2023) 5 SCC 360]. Further, a mere failure to keep up a promise is also not enough to initiate a criminal proceeding. Of course those are matters to be considered by the investigating officer.

17. Viewed in the light of the above precedents, this Court cannot come to the conclusion that this is a case where custodial interrogation is necessary. However, limited custody of petitioners has to be granted for the purpose of completing the investigation, as observed in ***Sushila Aggarwal's case*** (*supra*).

18. Accordingly, this application is allowed on the following conditions:

- (a) Petitioners shall appear before the Investigating Officer on 07.07.2025 from 10.00 am to 05.00 pm, and if required, again on 08.07.2025 from 10.00 am to 05.00 pm and shall subject themselves to interrogation.
- (b) If after interrogation, the Investigating Officer proposes to arrest the petitioners, then, they shall be released on bail on them executing a bond for Rs.50,000/- (Rupees fifty thousand only) each with two solvent sureties each for the like sum before the Investigating Officer.
- (c) Petitioners shall appear before the



2025:KER:46365

B.A. No.7487 of 2025

-:10:-

Investigating Officer as and when required and shall also co-operate with the investigation.

- (d) Petitioners shall not intimidate or attempt to influence the witnesses; nor shall they tamper with the evidence.
- (e) Petitioner shall not commit any similar offences while they are on bail.
- (f) Petitioners shall not leave India without the permission of the Court having jurisdiction.

In case of violation of any of the above conditions or if any modification or deletion of the conditions are required, the jurisdictional Court shall be empowered to consider such applications, if any, and pass appropriate orders in accordance with the law, notwithstanding the bail having been granted by this Court.

Sd/-
BECHU KURIAN THOMAS
JUDGE

jka/26.06.25.



2025:KER:46365

B.A. No.7487 of 2025

-:11:-

APPENDIX OF BAIL APPL. 7487/2025

PETITIONERS' ANNEXURES

Annexure A1	TRUE COPY OF THE FIR IN CRIME NO. 449/2024 OF MARADU POLICE STATION, ERNAKULAM,
Annexure A2	TRUE COPY OF THE INVESTMENT AGREEMENT DATED 30.11.2022
Annexure A3	TRUE COPY OF THE INTERIM ORDER DATED 03.05.2024, IN B.A. NO. 3848 OF 2024
Annexure A4	TRUE COPY OF THE ORDER DATED 17.05.2024 IN CRL.MC NO.4169/2024
Annexure A5	TRUE COPY OF THE ORDER DATED 21.05.2024 IN CRL.MC NO.4212/2024
Annexure A6	TRUE COPY OF THE BANK STATEMENT OF M/S PARAVA FILMS LLP'S AXIS BANK ACCOUNT BEARING ACCOUNT NO. 922020025271132, DATED 23.03.2024,
Annexure A7	TRUE COPY OF THE BANK STATEMENT OF M/S PARAVA FILMS LLP'S AXIS BANK ACCOUNT BEARING ACCOUNT NO. 922020025271132, DATED 27.06.2024,
Annexure A8	TRUE COPY OF THE BANK STATEMENT OF THE FIRST PETITIONER'S HDFC BANK ACCOUNT BEARING ACCOUNT NO. 50100172863140 DATED 01.06.2024 TO 30.06.2024
Annexure A9	TRUE COPY OF THE FINAL ORDER OF CMA (ARB) NO. 73/2024 ON THE FILES OF COMMERCIAL COURT III, ERNAKULAM, DATED 18.07.2024
Annexure A10	TRUE COPY OF THE JUDGEMENT, DATED 17.03.2025, IN B. A 3848 OF 2024
Annexure A11	TRUE COPY OF THE COMMON ORDER, DATED 22.05.2025 IN CRL.MC NO.4212/2024 AND CRL.MC NO.4169/2024
Annexure A12	TRUE COPY OF THE PETITION DATED 09.04.2024 IN MA (ARB). NO 73 OF 2024 BEFORE THE HON'BLE COMMERCIAL COURT OF ERNAKULAM



2025:KER:46365

B.A. No.7487 of 2025

-:12:-

Annexure A13	TRUE COPY OF THE ARBITRATION NOTICE SENT BY THE RESPONDENT NO.2 DATED 05.07.2024
Annexure A14	TRUE COPY OF THE REPLY NOTICE DATED 16.07.2024 SENT BY THE PETITIONERS
Annexure A15	TRUE COPY OF THE REPLY TO THE REPLY NOTICE SENT BY THE RESPONDENT NO. 2, DATED 12.08.2024
Annexure A16	TRUE COPY OF THE I.A. NO. 2/2024 DATED 31.07.2024 IN MA (ARB). NO 148 OF 2024 BEFORE THE HON'BLE COMMERCIAL COURT OF ERNAKULAM
Annexure A17	TRUE COPY OF THE E-COURT PROCEEDING SHOWING THAT A COUNTER HAS BEEN FILED BY THE PETITIONERS HEREIN IN IA NO.2 OF 2024 IN MA (ARB). NO 148 OF 2024 DATED NIL BEFORE THE HON'BLE COMMERCIAL COURT OF ERNAKULAM
Annexure A18	TRUE COPY OF THE E-COURT PROCEEDINGS IN MA (ARB). NO 148 OF 2024 BEFORE THE HON'BLE COMMERCIAL COURT OF ERNAKULAM DATED NIL
Annexure A19	TRUE COPY OF THE JUDGEMENT DATED 19.01.2024 IN JAY SHRI & ANR VS. STATE OF RAJASTHAN, 2024 LIVELAW (SC) 51