

**(2022) 02 KL CK 0002**

**High Court Of Kerala**

**Case No:** Bail Application No. 7522 Of 2021

Rajkumar Gupta

APPELLANT

Vs

State Of Kerala

RESPONDENT

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**Date of Decision:** Feb. 1, 2022

**Acts Referred:**

- Code of Criminal Procedure, 1973 - Section 4(2), 154, 195, 340, 438
- Indian Penal Code, 1860 - Section 34, 193, 200, 202, 406, 409, 417, 420, 466, 468, 471, 474
- Companies Act, 2013 - Section 210, 211, 211, 213, 439
- Prevention of Corruption Act, 1988 - Section 8, 13(1)(a), 13(1)(c), 13(1)(d), 13(2)

**Hon'ble Judges:** Dr Kauser Edappagath, J

**Bench:** Single Bench

**Advocate:** B.G.Harindranath, Anil K.Muhamed, B.S.Suraj Krishna, M P Prasanth

**Final Decision:** Allowed

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### **Judgement**

Dr. Kauser Edappagath, J

1. This is an application filed u/s 438 of the Code of Criminal Procedure (Cr.P.C.) seeking pre arrest bail.

2. The petitioners are the accused in Crime No.1196/2021 of Mattanchery Police Station. The 3rd respondent is the de facto complainant. The

offence alleged against the petitioners are under Sections 193, 200, 202, 406, 409, 417, 420, 466, 468, 471, 474 and 34 of IPC and Sections 447 and 448

of the Companies Act.

3. The petitioners and the 3rd respondent are brothers. They are the Directors and their parents and wives are the shareholders of three Private

Limited Companies viz., RBG Enterprises Pvt. Ltd., RBG Trading Corporation and RBG Retail Private Ltd. The prosecution allegation is that the

petitioners without the knowledge or consent of the 3rd respondent or other shareholders of the companies and in violation of the Articles of

Association of the Companies withdrew 23,69,99,835/- from RBG Enterprises Pvt Ltd, `31,33,68,008/- from RBG Trading Corporation and

`47,67,598/- from RBG Retail Private Limited for the period from 2015 to 2019 and transferred the same to other companies exclusively owned by

them and they unauthorisedly received in excess `4,25,00,000/- as salary. It is further alleged that when the de facto complainant and other

shareholders filed company petitions at the National Company Law Tribunal (for short "NCLT") challenging the above said misdeeds of the

petitioners, they fabricated minutes and attendance registers of the Annual General Meetings of the Companies and produced the same as originals at

the NCLT.

4. The petitioners moved an application for pre arrest bail at the Additional Sessions Court-VIII, Ernakulam as Crl.M.C.1927/2021. It was dismissed

as per order dated 20/09/2021.

5. I have heard Sri.B.G.Hareendranath, the learned counsel for the petitioners, Sri.Sukumar Ninan Oommen, the learned counsel for the 3rd

respondent and Sri.M.P.Prasanth, the learned Public Prosecutor. I have perused the case records as well as the statement of facts filed by the

Investigating Officer and the objection statement filed by the 3rd respondent.

6. The learned counsel for the petitioners submitted that the petitioners are absolutely innocent and they have been falsely implicated in the case. The

counsel further submitted that there are no materials to connect the petitioners with the alleged crime and hence they are entitled to get anticipatory

bail. The counsel also submitted that the 3rd respondent and other shareholders have already approached the NCLT by filing separate claim petitions

with the same allegations and some of them were already disposed of. Placing reliance on Sections 210 to 213 and 439 of the Companies Act, 2013,

the learned counsel submitted that the local police have no jurisdiction to register the crime and conduct the investigation. The learned counsel relied

on a decision of the Apex Court in Jeewan Kumar Raut and Another v. Central Bureau of Investigation [(2009) 7 SCC 526] and a decision of the

Madras High Court in Doraisamy and Another v. State rep. By Inspector of Police and Another (2019 SCC Online Mad.1354) in support of his said

submission. The counsel further submitted that the mandate of Sections 195 and 340 of Cr.P.C which deals with how to prosecute offences, inter

alia, relating to documents given in evidence, are not followed. The police conducted search at the office premises of the petitioners and seized the

entire documents and, as such, their custodial interrogation is not necessary, added the learned counsel.

7. The learned counsel for the 3rd respondent, on the other hand, contended that there are prima facie materials on record to show that the petitioners

have siphoned out `60 crores through related party transactions and that they fabricated records of the companies and produced the same as genuine

at the NCLT. These are intentional criminal acts on the part of the petitioners and if they are granted anticipatory bail, it would affect the course of

the investigation, submitted the counsel. In answer to the submission of the learned counsel for the petitioners that local police have no jurisdiction to

investigate, the learned counsel for the 3rd respondent submitted that Sections 210 to 213 and 439 of the Companies Act, 2013 do not denude the

rights of a person to set the criminal law in motion under Section 154 of Cr.P.C r/w S.438 of the Companies Act, 2013 and S.4(2) of Cr.P.C r/w 439

of the Companies Act, 2013 does not bar police from investigating criminal offences committed by individuals in a company. Reliance was placed on

the decision of the Apex Court in Lalita Kumari v. Government of Uttar Pradesh and Another [(2014) 2 SCC 1]. The counsel also submitted that the

offence alleged against the petitioners falls within the category of "economic offence" which constitute a class apart and need to be visited with a

different approach in the matter of granting of bail.

8. The learned Public Prosecutor submitted that the crime was initially registered by the Mattancherry Police which conducted initial investigation and

seized documents such as Board Meeting Minutes, Annual General Meeting Minutes, affidavit, attendance sheet, annual return statement etc., of the

three companies for the period from 2015 to 2019. Thereafter, as per the order of the State Police Chief, the investigation was transferred to the

Crime Branch, Ernakulam. It is submitted that the investigation is in progress. The learned Public Prosecutor further submitted that the Crime Branch

has already questioned the 3rd respondent and other shareholders as well as the witnesses, recorded their statements and also seized bank account

statements of all the three companies. The Public Prosecutor added that bank accounts of the wives of the petitioners are yet to be verified.

9. The learned counsel for the petitioners, at the outset, submitted that the Companies Act, 2013 being a special statute and the matter relating to

dealing with offences thereunder having been regulated by reason of the provisions thereof (Ss.210 to 213 and 435 to 441), the same shall prevail over

the provisions of the Cr.P.C and as such, the investigation must be conducted by Serious Fraud Investigation Team established u/s 211 of the

Companies Act, 2013 and the local police have no jurisdiction to conduct the investigation. According to the counsel, the investigation into the

allegations of related party transactions are regulated by Sections 210 to 212 of the Companies Act, 2013 and only Special Court constituted under the

Companies Act, 2013 can take cognizance of the offences as per S.439 of the Companies Act. The non compliance of the mandates of Sections 195

and 340 of Cr.P.C was also canvassed. It is submitted at the Bar that the petitioners have already filed CrI.M.C.No.4091/2021 before this Court to

quash FIR in the above crime on the ground that the same being hit by the bar u/s 195 of Cr.P.C and that the local police have no jurisdiction. Since

those questions are subjudice in the above said CrI.M.C., I do not find it appropriate to make any observation in this regard in this bail application.

10. The learned counsel for the 3rd respondent vehemently argued that the offence committed by the petitioners is a grievous offence inasmuch as it

falls within the category of 'economic offence' and hence, it needs to be visited with a different approach in the matter of bail. The learned counsel

relied on the following decisions in support of his said plea – CBI v. Anil Sharma (1997) 7 SCC 187; Jagan Mohan Reddy v. CBI (2013) 7 SCC 439;

P.Chidambaram v. Directorate of Enforcement (2020) 13 SCC 791 and Rahul v. State of Kerala 2021 (4) KLT 283.

11. Anil Sharma (supra) was with respect to an offence u/s 13(2) of the Prevention of Corruption Act. The allegation therein was that a Minister of Himachal Pradesh amassed wealth, misappropriating public money, far in excess of his known source of income. Jagan Mohan Reddy (supra) was with respect to offence u/s 13(2), 13 (1)(c) and (d) of the Prevention of Corruption Act apart from the offences under IPC. The allegation therein was that the Chief Minister abused his public office to the benefit of his son who amassed illegal wealth resulting in public injury. It was held that the economic offence is one involving huge loss of public fund affecting the economy of the country as a whole and thereby causing serious threat to the financial health of the country. P.Chidambaram (supra) was with respect to offence under Sections 8 and 13(2) of the Prevention of Corruption Act apart from the offences under IPC. It was a case involving corruption and abuse of high public office. It was held that the economic offence arises out of deep rooted conspiracies and effect on the community as a whole. Rahul (supra) was with respect to offence u/s 13(1)(a) of the Prevention of Corruption Act apart from offences under IPC. That was a case where huge amount of public money which was intended to be utilized for the uplifting of persons who belonged to Scheduled Caste was embezzled by the accused therein. The dictum laid down in none of the above decisions apply to the facts of the present case. The economic offence is a serious offence involving public money in which huge financial loss is caused to the State exchequer. It affects the economy of the country as a whole. The dispute in the present crime is purely private in nature. No public money is involved. No loss to the State exchequer is involved. The prosecution has no such case. For these reasons, I am not persuaded to subscribe to the submission of the learned counsel that the offence involved is an economic offence.

12. It is not in dispute that the petitioners and the 3rd respondent are the Directors and their parents and wives are the shareholders of the three Private Limited Companies mentioned above. The dispute arose between them which resulted in initiation of various legal proceedings including at NCLT in the year 2019. The present crime was registered in 2021. The allegations in the FIR are two fold:

(i) Siphoning of funds through related party transaction amounting to about `55 crores by the petitioners from the three companies for the period from 2015 to 2019 in violation of the Articles of Association and provisions of the Companies Act, 2013.

(ii) Fabrication of documents and production of the same at the NCLT to make believe that the related party transactions were with the knowledge of the 3rd respondent and the majority shareholders.

13. Out of the various cases pending at the NCLT between the petitioners and the 3rd respondent and mentioned in Annexure 2 of the bail application,

three cases " CP 114/KOB/2019, CP 119/KOB/2019 and CP 125/KOB/2019 were disposed of by the NCLT, Kochi Bench on 31st December,

2021. A copy of the order has been made available to me by the learned counsel for the petitioners for perusal. All these petitions were filed by

shareholders of the company viz. Sulochana Gupta and Minakshi Gupta against the companies, petitioners and the 3rd respondent. The very same

allegations in the present crime that the petitioners siphoned out funds through related party transactions, fabricated documents and produced the same

at NCLT were raised, among other things, in the above three cases. The NCLT after hearing both sides held that the related party transactions done

by the petitioners were contrary to the provisions of law and in breach of the Articles of Association of the Company and those transactions were,

accordingly, declared as invalid. The finding is that the related party transactions were in violation of the Articles of Association of the Company.

There is no finding that those were fraudulent transactions. There is absolutely no finding in the above mentioned orders of the NCLT that the

documents produced by the petitioners at the NCLT were forged and fabricated as alleged by the 3rd respondent. The request made by the petitioners

in the above mentioned three Company Petitions to order criminal investigation to the affairs of the companies was turned down.

14. Even though the alleged unauthorized related party transactions took place during the period from 2015 to 2019 and cases were filed at the NCLT

in the year 2019 itself, the complaint pertaining to the present registration of crime was made only in 2021. The case records would show that the

police conducted a search at the office of the petitioners on 6/9/2021 and seized several documents. The hard disks from the computers were also

seized. It is evident from Annexure 7 search list. The documents allegedly forged are already in the file of NCLT. In the statement of fact filed by the

investigating officer, it is stated that the Board Meeting Minutes, Annual General Meeting Minutes, affidavits, attendance sheets, annual return

statement etc. of all the three companies for the period from 2015 to 2019 and bank account statements of all the above mentioned companies were

seized by the police. Thus, it appears that almost all the documents were already seized. As such, the custodial interrogation of the petitioners does not

appear to be necessary. In the statement filed by the investigating officer, it is not stated that custodial interrogation of the petitioners is necessary.

The petitioners have no criminal antecedents. For all these reasons, I am of the view that the petitioners are entitled to pre arrest bail on conditions.

In the result, the application is allowed on the following conditions:-

(i) The petitioners shall be released on bail in the event of their arrest on executing a bond for 1,00,000/- (Rupees One lakh only) each with two solvent sureties for

the like sum each to the satisfaction of the arresting officer/investigating officer, as the case may be.

(ii) The petitioners shall fully co-operate with the investigation, including subjecting themselves to the deemed police custody for the purpose of discovery, if any, as and when demanded.

(iii) The petitioners shall appear before the investigating officer between 10.00 a.m and 12.00 a.m on every Monday and Thursday until further orders. The petitioners shall also appear before the investigating officer as and when required by him.

(iv) The petitioners shall not commit any offence of like nature while on bail.

(v) The petitioners shall not make any attempt to contact any of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.

(vi) The petitioners shall not leave State of Kerala without the permission of the trial Court.