

(2024) 12 KL CK 0086

High Court Of Kerala

Case No: Bail Application No. 4988 Of 2024

Reshma Jinesh

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Dec. 27, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 438
- Indian Penal Code, 1860 - Section 379, 403, 405, 406, 408, 420

Hon'ble Judges: C.S.Dias, J

Bench: Single Bench

Advocate: M.Sasindran, Satheeshan Alakkadan, Mahesh V Ramakrishnan, Babu S. Nair, P S Appu

Final Decision: Dismissed

Judgement

C.S.Dias, J

1. This is the second application filed under Section 438 of the Code of Criminal Procedure, 1973 (â€˜Codeâ€™™, for the sake of brevity), for an order of pre-arrest bail.
2. The petitioner is the sole accused in Crime No.430/2024 of the Payyannur Police Station, Kannur, which is registered against her for allegedly committing the offences punishable under Sections 379, 403, 405, 406, 408 & 420 of the Indian Penal Code, 1860.
3. The gist of the prosecution case is that: the accused while working as the Central Head Teacher of a play school name â€˜Little Amigozâ€™™, belonging to a firm in which the defacto complainant is the Managing Partner, to make unlawful gain for herself, created confusion in the minds of the

students and admitted them in a new play school named "Camp Kids". The accused had misappropriated Rs.12,00,000/- given by the students

and transferred the amount to her bank account. The accused also committed theft of the documents of the school between the period from

20.03.2024 to 27.03.2024. Thus, the accused has committed the above offences.

4. Heard; Sri. M. Sasindran, the learned counsel appearing for the petitioner, Sri. Sunilkumar Kuriakose, the learned Senior Public Prosecutor and Sri.

Babu S. Nair, the learned counsel appearing for the 3rd respondent/ defacto complainant.

5. The learned counsel for the petitioner submitted that there is a change of circumstance subsequent to the passing of Annexure AII order because

the petitioner has not committed the offences. The allegation that the petitioner committed theft and misappropriation is false. It is only because the

petitioner sought for an increase in her salary, that the defacto complainant has filed the false complaint. The petitioner has sent a whatsapp message

to the defacto complainant stating that she does not want to continue in the school. In fact, one of the partners of the firm and his wife had taken

away the records of the school. When the petitioner asked the partner for the documents, he outraged the petitioner's modesty. She had submitted

a complaint before the Police. However, no action has been taken in the matter. After the passing of Annexure AII order, the Investigating Officer

has proceeded with the investigation and has found that the complaint is false. The parents of the students and the teachers of the school have

submitted affidavits stating that the petitioner is innocent. The petitioner's custodial interrogation is not necessary and no recovery is to be

effected. Hence, the application may be allowed.

6. The learned Public Prosecutor stoutly opposed the application. He submitted that the petitioner has been absconding for the last 6 months,

which by itself dis-entitles the petitioner to an order of pre-arrest bail. Likewise, there is no change of circumstance subsequent to the passing of

Annexure AII order. This Court has categorically found that the petitioner's custodial interrogation is necessary and recovery is to be effected for

the proper investigation of the crime. If the petitioner is granted an order of pre-arrest bail it would hamper the investigation. Hence, the application

may be dismissed.

7. The learned counsel appearing for the 3rd respondent also seriously opposed the application. He submitted that there are incriminating materials to

establish that the petitioner has misappropriated Rs.12,00,000/-. The petitioner's custodial interrogation is necessary and recovery is to be

effected. The affidavits produced by the petitioner, purportedly executed by some parents and teachers are misleading. The said teachers and children

of the parents have joined the petitioner's new school. If the petitioner is granted an order of pre-arrest bail, it will hamper the investigation.

Hence, the application may be dismissed.

8. The prosecution allegation against the petitioner is that, she with an intention to cheat the defacto complainant took away documents of school and

created confusion in the minds of the students. Thereafter, she admitted the said students in her new School and made the students transfer

Rs.12,00,000/- to the petitioner's bank account, which was payable to the defacto complainant.

9. It was considering the seriousness and gravity of the economic offences alleged against the petitioner and the law laid down by the Hon'ble

Supreme Court in Srikant Upadhyay v. State of Bihar [2024 KHC OnLine 6137], this Court had held that the petitioner has not made out any valid

ground to invoke the discretionary jurisdiction of this Court under Section 438 of the Code. I do not find any change of circumstance subsequent to the

passing of Annexure AII order.

10. It is quite surprising to note that, despite Annexure AII order being passed on 03.06.2024, the Investigating Officer has not taken any effective

steps to trace out and apprehend the petitioner, even after the lapse of six months. The Registry is directed to forward a copy of this order to the

District Police Chief to take necessary action. The bail application is meritless and is only to be dismissed.

Resultantly, the bail application is dismissed.

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