

News

The Kerala High Court has granted bail to former MLA MC Kamarudheen in the Fashion Gold money laundering case.



The accused MLA and his business associate cannot be held in jail indefinitely without a trial, the court stated, noting that no prima facie evidence had been established against them.

MC Kamarudheen with Kerala High Court

In the Fashion Gold money laundering case, IUML leader and former Manjeshwar Member of the Legislative Assembly (MLA) MC Kamarudheen was granted bail by the Kerala High Court

on Tuesday.

Additionally, Kamarudheen's business partner TK Pookoya Thangal, a co-accused in the case, was granted bail by Justice Bechu Kurian Thomas.

Kamarudheen and Thangal, the petitioners, were charged by the Enforcement Directorate (ED) with participating in a scam that involved the siphoning out of crores of dollars and gold that had been invested by different individuals.

Notably, first information reports (FIRs) accusing the petitioners of defrauding investors served as the basis for the ED's money laundering prosecution.

The accused's argument that they had no malicious intent and that they were unable to reimburse investors for their money because of business setbacks during the COVID-19 outbreak was noted by the court.

The Court concluded that there did not seem to be a prima facie evidence of cheating against the two defendants in light of this submission. It stated that a business loss alone does not constitute cheating.

All of the FIRs appear to have been filed after the country entered a lockdown in September 2020 as a result of the COVID-19 epidemic. Since the main component of cheating is dishonest or fraudulent intent from the start, a business failure cannot result in an assumption of commission of the crime," the Court noted.

After pointing out that the two accused petitioners had already served more than 265 days in custody, it went ahead and granted them bail. They cannot be detained indefinitely without a prompt trial, the Court also stated.

"A person's liberty is violated when they are detained for an extended amount of time, particularly when the punishment period is brief. The ED will use the prolonged incarceration as a tool to keep the petitioners behind bars for an extended period of time without giving them a chance for a trial under the aforementioned situations. This Court believes that the petitioners' continuing custody is not justified in light of the aforementioned conditions," the Court stated.

The accused petitioners were charged with using four companies—Fashion Gold International Pvt Ltd, Fashion Ornaments Pvt Ltd, Nujoom Gold Pvt Ltd, and Qamar Fashion Gold Pvt Ltd—to solicit deposits and investments from the general public under a number of schemes.

They allegedly enticed investors with the promise of large returns and misappropriated cash to purchase real estate in their names. To evade detection by authorities, the funds were subsequently transferred to their families and other individuals.

According to the probe, around ₹20 crores that were collected from investors were embezzled in this way.

Based on the predicate offense of cheating under Section 420 of the Indian Penal Code (IPC), the ED filed a case under Sections 3 (money laundering) and 4 (punishment for money laundering) of the Prevention of Money Laundering Act, 2022 (PMLA).

Nonetheless, the Court determined that the accusations failed to substantiate the petitioners' dishonest or fraudulent intent, which is a necessary component to prove the offense under Section 420, IPC.

It pointed out that a lot of investors had already gotten dividends on some of their investments. The Court held that unless there was fraudulent intent at the time of making commitments, a simple failure to fulfill contractual obligations would not qualify as cheating.

The Court further stated that even if violations under the Banning of Unregulated Deposit Schemes Act (BUDS Act) were made proven against the accused, the PMLA would not apply because the BUDS Act is not a scheduled criminal under the PMLA.

It granted the petitioners bail on a number of terms after concluding that there was, at first glance, no evidence against them in a money laundering case.

Advocate Rahul Sasi represented TK Pookoya Thangal, while advocate Anoop V. Nair represented MC Kamarudheen.

Noushad KA, a public prosecutor, represented the State.

AR L Sundaresan, India's Additional Solicitor General, attended the Enforcement Directorate