2024:KER:58943

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE C.S.DIAS**

**TUESDAY, THE 6TH DAY OF AUGUST 2024 / 15TH SRAVANA, 1946**

**BAIL APPL. NO. 6182 OF 2024**

**CRIME NO.1193/2024 OF ALUVA EAST POLICE STATION, Ernakulam**

**AGAINST THE ORDER/JUDGMENT DATED 20.07.2024 IN CRMC NO.2174 OF 2024 OF DISTRICT COURT & SESSIONS COURT, ERNAKULAM**

**PETITIONER/S:**

**1 SUNIL**
**AGED 39 YEARS**
**S/O. SASIDHARAN, KALIYICKAL THARAYIL HOUSE,**
**PUTHIYAKAVU, K.S. PURAM, KARUNAGAPPALLY, KOLLAM,**
**PIN - 690528**

**2 RASHEED**
**AGED 37 YEARS**
**S/O.BASHEER, MANAYANTHARAYIL PIDEETTATHIL HOUSE,**
**SPM MARKET, AYANIVELIKULANGARA P.O.,**
**KARUNAGAPPALLY, KOLLAM, PIN - 690518**

**BY ADVS.**
**M.A.AHAMMAD SAHEER**
**E.A.HARIS**
**MUHAMMED YASIL**

**RESPONDENT/S:**

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

**SR.PP.SMT.SEETHA S.**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**C.S.DIAS,J**

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**Bail Application No.6182 of 2024**

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**Dated this the 6th day of August, 2024**

**ORDER**

The application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, 'BNSS') by the accused 1 and 2 in Crime No.1193/2024 of the Aluva East Police Station, Ernakulam, which is registered against the accused for allegedly committing the offences punishable under Section 303 of the Bharatiya Nyaya Sanhita (in short, 'BNS') and Section 23 r/w Section 20 of the Kerala Protection of Riverbank and Regulation of Removal of Sand Act (in short, 'Act'). The petitioners were arrested and remanded to judicial custody on 13.07.2024.

2. The concise case of the prosecution is that: on 12.07.2024, at around 23:45 hours, the accused were found transporting river sand illegally from the Periyar river in a lorry. The accused were arrested on the spot

with the contraband article. Thus, the accused have committed the above offences.

3. Heard; Sri.Ahammad Saheer M.A., the learned counsel appearing for the petitioners and Smt.Seetha S., the learned Senior Public Prosecutor.

4. The learned counsel for the petitioners submitted that the petitioners are innocent of the accusations leveled against them. There is no material to substantiate that the petitioners have committed the above offences. The offence under Section 303 of the BNS will not be attracted in view of the provisions under Section 23 r/w Section 20 of the Act attributed against the petitioners. In any given case, the petitioners have been in judicial custody for the last 24 days, the investigation in the case is practically complete and recovery has been effected. Therefore, the petitioners' further detention is unnecessary. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the application. She submitted that the petitioners have committed a similar offence on an earlier occasion. If the petitioners are released on bail, there is every likelihood of them repeating the same action. Therefore, the application may be dismissed.

6. The prosecution case is that the petitioners had committed theft of the river sand from the Periyar river. They were arrested on the spot with the contraband article. The fact remains that the petitioners have been in judicial custody for the last 24 days, the investigation in the case is practically complete and recovery has been effected.

7. In ***Sanjay Chandra v. CBI,*** *[2012 1 SCC 40],* the Honourable Supreme Court has categorically held that the fundamental postulate of criminal jurisprudence is the presumption of innocence, until a person is found guilty. Any imprisonment prior to conviction is to be

considered as punitive and it would be improper on the part of the Court to refuse bail solely on the ground of former conduct.

8. In ***Dataram Singh v. State of U.P.,*** *[(2018) 3 SCC 22]* the Honourable Supreme Court observed that grant of bail is a rule and putting a person in jail is an exception. Even though the grant of bail is entirely the discretion of the court, it has to be evaluated based on the facts and circumstances of each case and the discretion has to be exercised in a judicious and compassionate manner.

9. In bail applications, generally, it has been laid down from the earliest times that, the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called

upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

10. On an overall consideration of the facts, rival submissions made across the Bar, and the materials placed on record, particularly on considering the fact that the petitioners have been in judicial custody for the last 24 days, the investigation in the case is complete and recovery has been effected, I hold that the petitioners are entitled to be released on bail. Hence, I am inclined to allow the bail application.

In the result, the application is allowed, by directing the petitioners to be released on bail on them executing a bond for Rs.50,000/- (Rupees Fifty thousand only) with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

i. The petitioners shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is laid. They shall also appear before the Investigating Officer as and when required;

ii. The petitioners shall not directly or indirectly make any inducement, threat or procure to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;

iii. The petitioners shall not commit any offence while they are on bail;

iv. The petitioners shall surrender their passports, if any, before the court below at the time of execution of the bond. If they have no passports, they shall file affidavits to the effect before the court below on the date of execution of the bond;

v. In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the applications for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

vi. Applications for deletion/modification of the bail conditions shall be moved and entertained by the court below.

vii. Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioners even while the petitioners are on bail as laid down by the Hon'ble Supreme Court in ***Sushila Aggarwal v. State (NCT of Delhi) and another*** *[2020 (1) KHC 663]*.

sd/-

**C.S.DIAS,JUDGE**

rkc/06.08.24

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**APPENDIX OF BAIL APPL. 6182/2024**

**PETITIONER ANNEXURES**

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| **Annexure A1** | **THE TRUE COPY OF THE ORDER DATED 20.07.2024 IN CRL.M.C. NO.2174/2024 ON THE FILES OF 2ND ADDITIONAL COURT OF SESSIONS, ERNAKULAM** |