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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

BAIL APPL. NO. 4471 OF 2025

CRIME NO.670/2024 OF SANTHANPARA POLICE STATION, IDUKKI

AGAINST THE ORDER/JUDGMENT DATED 17.03.2025 IN CRMC NO.158 OF 2025 OF DISTRICT COURT & SESSIONS COURT,THODUPUZHA

PETITIONER(S)/ACCUSED:

BABU VARGHESE
AGED 59 YEARS
S/O VARGHESE THAMARAPPALLIL HOUSE, PALAM, POOPPARA, POOPPARA VILLAGE, UDUMBANCHOLA TALUK. IDUKKI DISTRICT, PIN - 685619

BY ADVS.
N.K.SHYJU
GIREESH PANKAJAKSHAN
LINATMOL CHERIYAN
VISHNU MOHAN

RESPONDENT(S)/COMPLAINANT:

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

BY ADV.
SR PP – SRI. HRITHWIK C S

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.V.KUNHIKRISHNAN, J

B.A.No.4471 of 2025

Dated this the 07th day of April, 2025

O R D E R

This Bail Application is filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita.

2. Petitioner is an accused in Crime No.670/2024 of Santhanpara Police Station, Idukki. The above case is registered against the petitioner alleging offences punishable under Sections 223(1)(a), 329(4) & 324 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS'), Section 7(a) of the Kerala Land Conservancy Act, 1957 and Section 3(2)(e) of the Prevention of Damage to Public Property Act, 1984 (for short 'PDPP Act')

3. The prosecution case is that, on 5-10-2024 at 3.00 P.M. the petitioner trespassed into the shop room situated at Pooppara town which was sealed by the village authorities and thereby caused damage of Rs.200/- by destructing the public

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property. Hence it is alleged that the accused committed the above said offences.

4. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

5. Counsel for the petitioner submitted that the allegation against the petitioner is not correct. The counsel submitted that the petitioner is ready to cooperate with the investigation.

6. The Public Prosecutor opposed the bail application.

7. This Court considered the contentions of the petitioner and the Public Prosecutor. Admittedly the only non-bailable offence alleged against the petitioner is under the PDPP Act. The alleged loss assessed by the prosecution is only Rs.200/-. Considering the facts and circumstances of the case, I think this bail application can be allowed on stringent conditions.

8. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme

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Court in **Chidambaram. P v Directorate of Enforcement [2019 (16) SCALE 870],** after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

9. Recently the Apex Court in **Siddharth v State of Uttar Pradesh and Another [2021(5)KHC 353]** considered the point in detail. The relevant paragraph of the above judgment is extracted hereunder:

> "12. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it.



> (Joginder Kumar v. State of UP and Others (1994 KHC 189: (1994) 4 SCC 260: 1994 (1) KLT 919: 1994 (2) KLJ 97: AIR 1994 SC 1349: 1994 CriLJ 1981)) If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

10. In **Manish Sisodia v. Central Bureau of Investigation [2023 KHC 6961]**, the Apex Court observed that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case.

11. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The petitioner shall appear before the Investigating Officer within two

weeks from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose to arrest the petitioner, he shall be released on bail on executing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the arresting officer concerned.

3. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner shall co-operate with the investigation and shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

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4. Petitioner shall not leave India without permission of the jurisdictional Court.

5. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

6. 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 petitioner even while the petitioner is 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].

7. The observations and findings in this order is only for the purpose of deciding this bail application. The principle laid down by

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this Court in ***Anzar Azeez v. State of Kerala*** [2025 SCC OnLine KER 1260] is applicable in this case also.

8. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court. The prosecution and the victim are at liberty to approach the jurisdictional Court to cancel the bail, if any of the above conditions are violated.

Sd/-

P.V.KUNHIKRISHNAN, JUDGE

DM