2025:KER:28661

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947

BAIL APPL. NO. 4472 OF 2025

CRIME NO.100/2025 OF RAILWAY POLICE STATION, KOTTAYAM

PETITIONER/ACCUSED:

SABEER FAKHEER
AGED 29 YEARS, S/O KHASIM FAKHEER, CHOVAPADA
P.O MURSHIDABAD, WEST BENGAL, INDIA, PIN – 742 149.

BY ADVS.
K.P.PRASANTH
ARUNRAJ S.
SUNITHA K.G.
T.A.AJMAL HUSSAIN
SREELAKSHMI K.

RESPONDENT/PETITIONER:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN – 682 031.

BY ADV
HRITHWIK C S, SR PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A. No.4472 of 2025

Dated this the 3rd day of April, 2025

O R D E R

This Bail Application is filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita.

2. Petitioner is the accused in Crime No.100 of 2025 of Railway Police Station, Kottayam. The above case is registered against the petitioner alleging offences punishable under Section 20(b)(ii)B of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

3. The prosecution case is that the accused was found in possession of 3.015 Kg of Ganja. The petitioner was arrested on 21.02.2025.

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

5. Counsel appearing for the petitioner submitted that the petitioner is ready to abide any conditions, if this Court grants him bail.

6. Public Prosecutor opposed the bail application. The Prosecutor submitted that as per the report received by him, no criminal antecedent is alleged against the petitioner. The Public Prosecutor also submitted that the petitioner is from the State of West Bengal and if he released on bail, he will not be available for trial. At this stage, the counsel for the petitioner submitted that the petitioner is ready to offer local sureties from Kottayam District. The same is recorded. I make it clear that the above submission is not a direction from this Court, but the counsel for the petitioner voluntarily submitted it.

7. This Court considered the contention of the petitioner and the Public Prosecutor. It is true that allegation against the petitioner is serious. But, the quantity seized is only intermediate quantity. Hence, the

rigour under Section 37 of the NDPS Act is not applicable. No criminal antecedent is alleged against the petitioner. The petitioner is in custody from 21.02.2025. In the facts and circumstances of the case, I think the petitioner can be released on bail after imposing stringent conditions. But, I make it clear that, if the petitioner is involved in similar offence in future, the Investigating Officer is free to file appropriate application before the Jurisdictional Court to cancel the bail, and if such an application is filed the Jurisdictional Court can pass appropriate orders, even though this bail order is passed by this Court.

8. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme 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. Moreover, in **Jalaluddin Khan v. Union of India [2024 KHC 6431]**, the Hon'ble Supreme Court observed that:

> “21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a

> case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Art.21 of our Constitution.” (underline supplied)

10. In **Manish Sisodia v. Directorate of Enforcement [2024 KHC 6426]**, also the Hon'ble Supreme Court observed that:

> “53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well - settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non - grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is

exception".”

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. Petitioner shall be released on bail on executing a bond for Rs.2,00,000/- (Rupees Two Lakhs only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court. The petitioner shall offer local sureties from Kottayam District and the same is recorded.

2. 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/her from disclosing such facts to the Court or to any police officer.

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

4. 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.

5. The observations and findings in this order is only for the purpose of

deciding this bail application. The principle laid down by this Court in **Anzar Azeez v. State of Kerala** [2025 SCC OnLine KER 1260] is applicable in this case also.

6. 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 there is any violation of the above conditions.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

AMR