



2025:KER:30471

BAIL APPL. NO. 4614 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

BAIL APPL. NO. 4614 OF 2025

CRIME NO.370/2025 OF Varkala Police Station,

Thiruvananthapuram

PETITIONERS/ACCUSED NOS.1 AND 2:

- 1 VINTU VIJAYAN
AGED 40 YEARS
S/O VIJAYAN, RESIDING AT CHARUVILA VEEDU,
VACHARMUKKU, JANARDHANAPURAM, VARKALA P.O,
VARKALA VILLAGE, THIRUVANANTHAPURAM DISTRICT,,
PIN - 695141
- 2 ELISA BASHA
AGED 33 YEARS
S/O FAISY, RESIDING AT THODIYIL VEEDU,
KURAKKANNI, VARKALA P.O, VARKALA VILLAGE,
THIRUVANANTHAPURAM DISTRICT,, PIN - 695141

BY ADVS. J.R.PREM NAVAZ
MUHAMMED SWADIQ

RESPONDENT/S:

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

SEENA C-PP



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**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
08.04.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



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P.V.KUNHIKRISHNAN, J.

B.A.No.4614 of 2025

Dated this the 08th day of April, 2025

ORDER

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

2. Petitioners are the accused in Crime No.370/2025 of Varkala Police Station. The above case is registered against the petitioners alleging offences punishable under Sections 189(2), 191(2), 191(3), 296(b), 126(2), 115(2) and 118(1) r/w 190 of the Bharatiya Nyaya Sanhita (for short, BNS).

3. The prosecution case is that accused Nos. 1 to 5 formed themselves in to an unlawful assembly and wrongfully restrained the defacto complainant who is an authorikshaw driver. It is further alleged that the 1st accused uttered abusive words and dragged him out of the auto rickshaw, and the 2nd accused assaulted him on his back, using an iron rod. It is also alleged that the 1st accused along with



three others kicked him all over his body. Hence it is alleged that the accused committed the offence.

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

5. The counsel for the petitioners submitted that the only non-bailable offence alleged against the petitioners is under Section 118(1) of BNS and the petitioners are ready to abide any conditions if this Court grant them bail. The Public Prosecutor opposed the bail application. But the Public Prosecutor submitted that there is no criminal antecedents to the petitioners as per the report received by her from the Investigating Officer.

6. This Court considered the contentions of the petitioners and the Public Prosecutor. The only non-bailable offence alleged against the petitioners is under Section 118(1) of BNS. The maximum punishment that can be imposed for the said offence is three years. There is no criminal antecedent to the petitioners. Considering the facts and circumstances of the case, I think the petitioners can be released on bail.

7. 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.

8. 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.”

9. 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.

10. 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 petitioners 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 petitioners, they shall be released on bail on executing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties each for the like sum to the satisfaction of the arresting officer concerned.
3. The petitioners shall appear before the Investigating Officer for interrogation as and when required. The petitioners 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.

4. Petitioners shall not leave India without permission of the jurisdictional Court.
5. Petitioners shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are 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 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].
7. The observations and findings in this order is only for the purpose of deciding



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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.

8. If any of the above conditions are violated by the petitioners, 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

JV