IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

BAIL APPL. NO. 4637 OF 2025

CRIME NO.126/2025 OF Poochakkal Police Station, Alappuzha

AGAINST THE ORDER/JUDGMENT DATED 25.02.2025 IN CRMC NO.332 OF 2025 OF DISTRICT & SESSIONS COURT, ALAPPUZHA

PETITIONERS/ACCUSED 1 TO 3 & 5:

1 SAVIOUS
AGED 18 YEARS
S/O THANKACHAN, THAIKKOOTTATHIL, THAIKKATTUSSERY P.O, THAIKKATTUSSERY PANCHAYATH, CHERTHALA, ALAPPUZHA, PIN - 688528

2 DAYA NIDHI
AGED 18 YEARS
S/O RAVIKUMAR, ANCHUPURACKAL, THAIKKATTUSSERY P.O, THAIKKATTUSSERY PANCHAYATH, CHERTHALA, ALAPPUZHA, PIN - 688528

3 THANKACHAN,
AGED 51 YEARS
S/O VARGHESE, THAIKKOOTTATHIL, THAIKKATTUSSERY P.O, THAIKKATTUSSERY PANCHAYATH, CHERTHALA, ALAPPUZHA, PIN - 688528

4 HELLOYIS
AGED 23 YEARS
, D/O THANKACHAN, THAIKKOOTTATHIL, THAIKKATTUSSERY P.O, THAIKKATTUSSERY PANCHAYATH, CHERTHALA, ALAPPUZHA, PIN - 688528

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

RESPONDENT/COMPLAINANT:

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

2 THE STATION HOUSE OFFICER
POOCHAKKAL POLICE STATION,
ALAPPUZHA DISTRICT., PIN - 688526

OTHER PRESENT:

SRI NOUSHAD K A, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A.No.4637 of 2025

Dated this the 10th 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.126/2025 of Poochakkal Police Station. The above case is registered against the petitioners alleging offences punishable under Sections 118(1), 126 (2), 332(c), 351, 115 (2), 296 (b), 74, 189, 190 and 191 of the Bharatiya Nyaya Sanhita (for short, BNS).

3. The prosecution case is that, because of previous animosity towards the defacto complainant for spreading news with respect to their drunkenness, petitioners and others formed themselves into an unlawful assembly and caused bodily hurt to the defacto complainant, after trespassing into the house of the defacto complainant.

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

5. The counsel for the petitioners submitted that the allegation against the petitioners are not correct and it is a false case foisted against the petitioners. The counsel also submitted that no serious injury is sustained to the victim. The Public Prosecutor opposed the bail application. But the Public Prosecutor submitted that no criminal antecedents are alleged against the petitioners as per the report received by him.

6. No criminal antecedents are alleged against the petitioners. Moreover, the maximum punishment that can be imposed for the offences alleged are upto seven years. Considering the facts and circumstances of the case, I think the petitioners can be released on bail after imposing stringent conditions.

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. The petitioners shall appear before the Investigating Officer on all Mondays at 10 am, till final report is filed.

7. 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].

8. 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.

9. 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