2025:KER:31485

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. 4653 OF 2025

CRIME NO.40/2025 OF NEYYATTINKARA POLICE STATION, THIRUVANANTHAPURAM

PETITIONER(S)/ACCUSED NO.3:

SUREESH
AGED 46 YEARS
S/O SUSEELAN, SUREESH BHAVAN, KAMUKKINKODE, THIRUVANANTHAPURAM, PIN - 695123

BY ADV D.SREEKANTH

RESPONDENT(S)/STATE:

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

BY ADV.
SRI HRITHWIK C S, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10.04.2025, ALONG WITH Bail Appl..4654/2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:31485

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. 4654 OF 2025

CRIME NO.40/2025 OF NEYYATTINKARA POLICE STATION, THIRUVANANTHAPURAM

AGAINST THE ORDER/JUDGMENT DATED IN BAIL APPL. NO.4653 OF 2025 OF HIGH COURT OF KERALA

PETITIONER(S)/ACCUSED NO.2:

AJI
AGED 38 YEARS
S/O JABHAMONY, KURRAVAN VEEDU, AVANAKUZHI,
NELLIMOODU.P.O, THIRUVANANTHAPURAM, PIN - 691523

BY ADV P.V.JEEVESH

RESPONDENT(S)/STATE:

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

BY ADV.
SRI. G SUDHEER, PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10.04.2025, ALONG WITH Bail Appl..4653/2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:31485

P.V.KUNHIKRISHNAN, J

B.A.No.4653 & 4654 of 2025

Dated this the 10th day of April, 2025

O R D E R

These Bail Applications filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita are connected and therefore, I am disposing of these bail applications by a common order.

2. Petitioners in these bail applications are the accused in Crime No.40/2025 of Neyyattinkara Police Station, Thiruvananthapuram. The above case is registered against the petitioners and others alleging offences punishable under Sections 126(2), 296(b), 115(2), 118(1) & 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS').

3. The prosecution case is that the accused wrongfully restrained the defacto complainant, used filthy language against him and attacked him. It is alleged that the defacto complainant sustained injury. Hence it is alleged that the accused



committed the above said offences.

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

5. Counsel for the petitioners submitted that the only non-bailable offence alleged against the petitioners is under Section 118(1) of the BNS. The counsel submitted that the petitioners are ready to abide any conditions if this Court grant them bail.

6. The Public Prosecutor opposed the bail application.

7. 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 the BNS. The maximum punishment that can be imposed for the offence alleged is imprisonment for three years. The Apex Court in **Arnesh Kumar v. State of Bihar and Another** [2014 (8) SCC 273] observed that, even while considering an application for anticipatory bail, the court should take a lenient view if the



punishment that can be imposed is only up to 7 years. It will be better to extract the relevant portion of the above judgment:

> "7. xxxxxxxxx
>
> 7.1. From a plain reading of the aforesaid provision, it is evident that all person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case, or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer, or unless such accused person is arrested, his conclusions, which one may reach based on facts.
>
> 7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any

> of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.
>
> 7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes, envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC." Considering the facts and circumstance of the case, I think these bail applications can be allowed on stringent conditions.

Keeping in mind the above principle, this Court considered the facts in this case. I think the custodial interrogation of the petitioners is not necessary. The petitioners can be directed to surrender before the Investigating Officer and after interrogation, if the arrest is

2025:KER:31485

recorded, there can be a direction to release the petitioners on bail.

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. 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 these cases, these Bail Applications are 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 them 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].

2025:KER:31485

7. The observations and findings in this order is only for the purpose of deciding these bail applications. The principle laid down by this Court in ***Anzar Azeez v. State of Kerala*** [2025 SCC OnLine KER 1260] is applicable in these cases 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

DM