2025:KER:31993

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

BAIL APPL. NO. 4886 OF 2025

CRIME NO.173/2025 OF Thrikkunnappuzha Police Station, Alappuzha

PETITIONER(S):

1 SHANAVAS
AGED 40 YEARS
S/O ABUBACKER, MARAKKARUPARAMBIL,
THRIKKUNNAPPUZHA.P.O., ALAPPUZHA, PIN - 690515

2 SAJEENA
AGED 34 YEARS
W/O SHANAVAS, MARAKKARUPARAMBIL HOUSE,
THRIKKUNNAPPUZHA.P.O., ALAPPUZHA, PIN - 690515

BY ADVS.
A.RAJASIMHAN
VYKHARI.K.U
ANAS ALI M.M.

RESPONDENT(S):

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 11.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.V.KUNHIKRISHNAN, J.

BA No.4886 of 2025

Dated this the 11th day of April, 2025

O R D E R

This bail application is filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

2. Petitioners are the 1st and 3rd accused in Crime No.173/2025 of Thrikkunnappuzha Police Station, Alappuzha. Now the case is transferred to Alappuzha North Police Station and the case is pending as Crime No.519/2025 The above case is registered against the petitioners alleging offences punishable under Section 376(2)(n), 323, 324, 506 and 34 of the Indian Penal Code.

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3. The prosecution case is that the 1st petitioner/1st accused committed rape on the victim and the 2nd petitioner who is the 3rd accused threatened the victim that the video of the victim will be shared in social media. It is also alleged that the 1st petitioner presented the victim to the 2nd accused and the 2nd accused also committed rape on her. Hence, it is alleged that the accused committed the offence.

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

5. The counsel for the petitioners submitted that, even if the entire allegations are accepted, the offence of rape is not committed. The counsel submitted that, even according to the defacto complainant, the 1st petitioner and the defacto complainant were travelling together at different places and also stayed at different places. It is



submitted that it is only consensual sexual intercourse. The counsel also submitted that the petitioners are ready to abide any condition imposed by this Court, if this Court grant them bail.

6. The Public Prosecutor opposed the bail application.

7. This Court perused the First Information Statement (FIS) given by the defacto complainant. According to the petitioner, she is a divorcee. She met with 1st accused Shanavaz and started business with the above Shanavaz. It is stated that on 22.02.2021, the 1st accused took her to a hotel and there was some forceful sexual intercourse by him. Thereafter, it is stated that, the 1st accused and the victim traveled at different places and there was sexual intercourse between them from a lodge at Attakulangara, Trivandrum, a lodge at Alappuzha and



different lodges at Ernakulam, Mumbai, Vashi, Dlehi etc. In March 2021, it is alleged that the victim was presented to the 2nd accused and on that day, the 2nd accused had sexual intercourse with the victim. Thereafter, also as per the FIS, the relationship between the victim and 1st accused continued. The complaint is filed on 2025. I do not want to make any further opinion about the same. Considering the facts and circumstances of the case, I think, the petitioners can be released on bail after imposing stringent conditions. There can be a direction to the petitioners to appear before the Investigating Officer for two days continuously from 10:00 a.m to 04:00 pm., thereafter, if arrest is recorded, there can be a direction to the Investigating Officer to release the petitioners on bail after imposing 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 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.



Considering the dictum laid down in the above decisions and considering the facts and circumstances of this case, this Bail Application is allowed with the following conditions:

1. The petitioners shall appear before the Investigating Officer within two weeks from today and shall undergo interrogation. The petitioners shall appear before the Investigating Officer for two days continuously from 10.00 AM to 04.00 PM.

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) 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 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.*

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 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].*

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 this 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

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