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. 4975 OF 2025

CRIME NO.428/2025 OF Ettumanoor Police Station, Kottayam

PETITIONERS/ACCUSED NOS.1 AND 2:

1 **NIKHIL SURESH**
AGED 19 YEARS
SON OF SURESH M.K, MANDAPATHIL HOUSE, VETTIMUKAL P.O, ETTUMANOOR, KOTTAYAM, PIN - 686631

2 **ABHIDEV M**
AGED 24 YEARS
SON OF MANOJ M, MANDAPATHIL HOUSE, VETTIMUKAL P.O, ETTUMANOOR, KOTTAYAM, PIN - 686631
BY ADVS. IRFAN ZIRAJ
P.M.ZIRAJ

RESPONDENT/STATE/COMPLAINANT:

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

2 **THE SUB INSPECTOR OF POLICE**
ETTUMANOOR POLICE STATION, KOTTAYAM DISTRICT, PIN – 686631
SRI G SUDHEER, 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.4975 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.428/2025 of Ettumanoor Police Station. The above case is registered against the petitioners alleging offences punishable under Sections 296(b),115(2), 74, 117(2) and 333 read with 3(5) of the Bharatiya Nyaya Sanhita (for short, BNS).

3. The prosecution case is that due to the alleged enmity created, consequent to the defacto complainant showing one Mr.Jomon that the 2nd accused smoked beedi, the accused together on 26.03.2025 at 9:30 P.M in Vettimukal Mahatma Colony Ground, physically assaulted the defacto complainant and pursuant to the same attacked the mother of defacto

complainant in the house of the defacto complainant close to the ground. It is further alleged that injury was caused due to the above stated incident to the mother 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. The only non bailable and offences alleged against the petitioners are under Sections 74 and 333 of BNS. Even if the entire allegations are accepted, the offence under Section 74 of BNS is not attracted. 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. This Court considered the contentions of the petitioners and the Public Prosecutor. It is true that the allegation against the petitioners are serious. But in the facts and circumstances of the case, whether the ingredients of Section 74 of BNS is attract is a matter to be investigated.

Moreover, no criminal antecedents are alleged against the petitioners. But if the petitioners are released on bail, there will be further law-and-order problem because the petitioners are neighbours of the victim. Therefore the bail can be granted on condition that the petitioners will not enter the jurisdictional limit of Ettumanoor Police Station for a period of one month.

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 will not enter the jurisdictional limit of Ettumanoor Police Station for a period of one month.

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