2025:KER:31184

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. 5003 OF 2025

CRIME NO.104/2025 OF Mukkom Police Station, Kozhikode

AGAINST THE ORDER/JUDGMENT DATED IN Bail Appl. NO.3349 OF 2025 OF HIGH COURT OF KERALA

PETITIONER/S:

1 **M.K DEVADASAN**
AGED 65 YEARS
S/O APPU , ULPPILINGAL HOUSE, NORTH MAMBATTA, MANASSERY P.O, KOZHIKODE DISTRICT, PIN - 673602

2 **RIYAS A.K**
AGED 48 YEARS
S/O MAMMAD KOYA, KARUVASSERI PUTUVOYIL VENGERI P.O, KOZHIKODE, PIN - 673010

3 **SURESH BABU V.T**
AGED 47 YEARS
S/O GANGADHARAN NAIR, VADAKKETHODUKAYIL HOUSE, CHOOLOOR, NIT P.O, KOZHIKODE DISTIRICT, PIN - 673601

BY ADVS.
JOSEPH SEBASTIAN PURAYIDAM
K.MINTOOB CHAND

RESPONDENT/S:

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

SRI HRITHWIK C S, 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.5003 of 2025

Dated this the 10th day of April, 2025

O R D E R

This Bail Application is filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS).

2. Petitioners are the accused in Crime No.104/2025 of Mukkom Police Station, registered alleging offences punishable under Sections 332(c), 74, 78, 62 of 64 r/w 3(5) of the Bharatiya Nyaya Sanhita (BNS), 2023.

3. The prosecution case is like this; the informant is a Managerial Staff in the Motel owned by the first petitioner at Mukkom and the second and the third petitioners are the electrician doing maintenance work and the security, respectively, in the said Motel. At around 11.00 pm., on 01.02.2025, while the informant was playing video games in the balcony of the house which was an accommodation for

the lady staff of the Motel as arranged by the first petitioner, the petitioners together trespassed into the said house in furtherance of a common intention shared by them. The first petitioner caught hold of the hands of informant, meanwhile, the second and the third petitioners went near to the informant as a result of which the petitioner froze due to fear and in-order to escape from the clutches of the petitioners, the informant jumped from the balcony of the house as a result of which she had sustained injuries on hipbone and spine column. Even then, the second petitioner dragged the informant forcefully inorder to take her to the room with an intent to commit rape on her which was successfully resisted by the informant. The petitioners are thereby alleged to have committed offences punishable under Sections 332(c), 74, 78, 62 of 64 r/w 3(5) of BNS.

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

5. The learned counsel for the petitioners submitted that, the petitioners are in custody from 05.02.2025. He submitted that the petitioners are ready to abide by any conditions, if this Court grants them bail.

6. Public Prosecutor opposed the bail application. He submitted that the allegation against the petitioners are very serious.

7. This Court considered the contentions of the petitioners and the Public Prosecutor. It is true that the allegations against the petitioners are serious. But, the petitioners earlier filed a bail application before this Court as B.A No.3349/2025. After hearing both sides, this Court was not inclined to grant bail because of the serious allegation against the petitioners. At that stage, the counsel for the petitioners sought permission to withdraw the bail application with liberty to move it after sometime. This Court granted liberty to move the bail application after three weeks. Accordingly, the present bail application is filed. Now, the

petitioners are in custody from more than 60 days. Considering the facts and circumstances of the case and also considering the period of detention, I think, the petitioners can be released 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. Moreover, in **Jalaluddin Khan v. Union of India [2024 KHC 6431]**, the Hon'ble Supreme Court observed that:

> “21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the

material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to

> grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Art.21 of our Constitution.” (underline supplied)

10. In **Manish Sisodia v. Directorate of Enforcement [2024 KHC 6426]**, also the Hon'ble Supreme Court observed that:

> “53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well - settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non - grant of bail even in

> straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".

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. Petitioners shall be released on bail on executing a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.
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> 2. 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.

3. Petitioners shall not leave India without permission of the jurisdictional Court.

4. 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.

5. 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.

6. 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 there is any violation of the above conditions.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

SSG