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. 5072 OF 2025

CRIME NO.420/2025 OF Medical College Police Station,

Thiruvananthapuram

PETITIONER/ACCUSED NO.2:

AJEESH
AGED 37 YEARS
S/O. A. BABY, MELE KUNNARAVILA VEEDU,
MUNDAIKONAM, MUTTADA.P.O., THIRUVANANTHAPURAM
DISTRICT, PIN - 695025

BY ADVS.
K.K.DHEERENDRAKRISHNAN
N.P.ASHA

RESPONDENT/STATE:

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

OTHER PRESENT:

SRI HRITHWIK C S, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A.No.5072 of 2025

Dated this the 11th day of April, 2025

ORDER

This Bail Application is filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita.

2. Petitioner is the 2nd accused in Crime No.420/2025 of Medical College Police Station, Thiruvananthapuram. The above case is registered against the petitioner and others alleging offences punishable under Sections 296(b),115(2), 118(1) and 110 read with Section 3(5) of the Bharatiya Nyaya Sanhita (for short, BNS).

3. The prosecution case is that, on 30.03.2025 at 10 am, when the defacto complainant reached Parottukonam Junction, the accused restrained the defacto complainant and abused him and taken the chopper carried by the defacto complainant and the 1st accused warded with chopper and hit with handle on the head. The 2nd accused attacked with hand

and when he fell down, both accused kicked him. Hence it is alleged that the accused committed the offence.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

5. The counsel for the petitioner submitted that it is a case and counter case. Annexure-II is the counter case. It is submitted that the petitioner was CW6 in S.C. No.311/2015 on the file of the Principal Assistant Sessions Judge, Thiruvananthapuram. When he appeared on 29.03.2025 as evident by Annexure-IV, he submitted a complaint before the Sessions Judge that there is threat from the defacto complainant who is the 2nd accused. Thereafter Annexure-II FIR was registered on the next day. The Public Prosecutor opposed the bail application and submitted that there is criminal antecedent to the petitioner.

6. Admittedly it is a case and counter case. There are two versions about the same incident. Which version is correct cannot be decided in a bail application. Considering the facts and circumstances of the case, I think this bail application can be allowed.

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, I think bail can be granted after imposing stringent conditions.

Therefore, this Bail Application is allowed with the following directions:

1. The petitioner 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 petitioner, he 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 petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner 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. Petitioner shall not leave India without permission of the jurisdictional Court.

5. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is 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 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].

7. 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.

8. If any of the above conditions are violated by the petitioner, 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