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. 5143 OF 2025

CRIME NO.202/2025 OF Chevayur Police Station, Kozhikode

AGAINST THE ORDER/JUDGMENT DATED IN Bail Appl. NO.3830 OF 2025 OF HIGH COURT OF KERALA

PETITIONER/ACCUSED:

ALFAN. E
AGED 34 YEARS
S/O. IBRAHIM.E, KARAKKUNNUMAL HOUSE, KOVOOR, CHEVAYUR.P.O., KOZHIKODE, PIN - 673017

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

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, 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.5143 of 2025

Dated this the 10th day of April, 2025

ORDER

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

2. Petitioner is the accused in Crime No.202/2025 of Chevayur Police Station. The above case is registered against the petitioner alleging offences punishable under Section 108 of the Bharatiya Nyaya Sanhita (for short, BNS).

3. The prosecution case is that, on 24.02.2025 between 12.30 pm and 03.40 pm, Mousa Maharis aged 21 years who is the second year LL.B Student of Govt Law College, Kozhikode committed suicide by hanging in her paying guest hostel. It is alleged that she was in love with the petitioner for the past 4 months and when she attempted to discontinue the relationship, the accused harassed her. 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 the petitioner is in custody from 07.03.2025 and he is ready to abide any conditions if this Court grant him bail. The Public Prosecutor seriously opposed the bail application and submitted that the petitioner harassed the victim and that is why she committed suicide. Adv.Vishnu Bhuvanendran who appeared for the father of the deceased seriously opposed the bail application and submitted that this is a clear case in which there is abetment to commit suicide from the side of the petitioner. The petitioner is a married man. Suppressing the same, he started relationship with the victim who is aged only 21 years. The counsel submitted that because of the harassment from the petitioner, the victim committed suicide.

6. It is true that the allegation against the petitioner is very serious. But the question to be decided is whether the ingredients of Section 108 of BNS is attracted or not. I do not want to make any observation about the same because the investigation is going on. The petitioner earlier

filed a bail application before this Court as BA No.3830/2025. After hearing both sides, this Court was not inclined to grant bail to the petitioner considering the seriousness of the allegation against the petitioner. At that stage, the counsel for the petitioner sought permission to withdraw the bail application with liberty to move it again. This Court granted liberty to move it again after ten days. Accordingly the present bail application is filed. Considering the facts and circumstances of the case, I think bail can be granted to the petitioner after imposing stringent conditions.

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. 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)

9. 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"."

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. Petitioner 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.

2. 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/her from disclosing such facts to the Court or to any police officer.

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

4. The petitioner shall surrender his passport before the jurisdictional court and if he has no passport, he shall file an affidavit to that effect.

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. The petitioner shall appear before the Investigating Officer on all Mondays at 10 am, till final report is filed.

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 there is any violation of the above conditions.

sd/-
P.V.KUNHIKRISHNAN
JUDGE

jv