2025:KER:31326

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. 5168 OF 2025

CRIME NO.218/2025 OF Ottapalam Police Station, Palakkad

AGAINST THE ORDER/JUDGMENT DATED 29.03.2025 IN CRMP NO.2581 OF 2025 OF JUDICIAL MAGISTRATE OF FIRST CLASS - I, OTTAPPALAM

PETITIONER(S)/ACCUSED NO.6 & 7:

1 **HARILAL U**
AGED 34 YEARS
S/O. UDAYAKUMAR, KOCHUMUGALIL VEEDU, PANDITHITTA, AMBALANARAPPU, THALAVOOR, KOLLAM, PIN - 691508

2 **ARAVIND THYAGARAJAN**
AGED 33 YEARS
S/O. M.C. THYAGARAJAN, TC 51/285, PADMAVILASAM PUTHAN VEEDU, VATTAVILLA, THIRUMALA, THIRUVANANTHAPURAM, PIN - 695006

BY ADV SERGI JOSEPH THOMAS

RESPONDENT(S)/COMPLAINANT:

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

2 **THE STATION HOUSE OFFICER**
OTTAPALAM POLICE STATION, PALAKAD DISTRICT,

PIN - 679101

BY ADV.
SRI.NOUSHAD K A, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:31326

P.V.KUNHIKRISHNAN, J

B.A.No.5168 of 2025

Dated this the 10th day of April, 2025

O R D E R

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

2. Petitioners are accused Nos.6 & 7 in Crime No.218/2025 of Ottapalam Police Station, Palakkad. The above case is registered against the petitioners and others alleging offences punishable under Secs. 318(4), 316(5) & 111 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS').

3. The prosecution case is that during the period from 29.06.2024 and at 4 pm on 28.02.2025, while the defacto complainant is working as a Manager in Co-operative Urban Bank, Pathiripala Branch, the first accused, who was working as a Senior Accountant in the above said bank, in furtherance of his common intention along with accused Nos.2 to 4, who are his relatives, intentionally cheated the Bank by pledging spurious gold ornaments

34 times and caused a loss to the tune of ₹27,00,000/- to the Bank. Hence it is alleged that the accused committed the above said offences.

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

5. Counsel for the petitioners submitted that the petitioners are in custody from 22.03.2025. The counsel submitted that the petitioners are ready to abide any conditions if this Court grant them bail. The counsel also submitted that the allegations against the petitioners are not correct.

6. The Public Prosecutor opposed the bail application. But the Public Prosecutor submitted that, no criminal antecedents are alleged against the petitioners.

7. This Court considered the contentions of the petitioners and the Public Prosecutor. It is true that the allegation against the petitioners is serious. But, they are in custody from 22.03.2025. Indefinite incarceration of the petitioners are not necessary. Moreover, no criminal antecedents are alleged against the petitioners. Considering the facts and circumstances of the

case, 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".”

11. 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) each with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.
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 them 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

DM