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. 5173 OF 2025

CRIME NO.1797/CB/EOW/EKM/2024 OF CRIME BRANCH, ERNAKULAM

AGAINST THE ORDER DATED 03.04.2025 IN CMP NO.1346 OF 2025 OF JUDICIAL MAGISTRATE OF FIRST CLASS I ,PERUMBAVOOR

PETITIONERS/ACCUSED 9 AND 14:

1 PUSHPAPRABHA VARGHESE
AGED 62 YEARS, W/O LATE VARGHESE , CHAKALA (H), IRINGOL KARA, PERUMBAVOOR VILLAGE, KUNNATHUNADU THALUK , ERNAKULAM, PIN – 683 542.

2 NISHA ANI
AGED 43 YEARS, W/O P. ANI JOSEPH THOTTUPPURAM (H), KARATTUPALLIKKARA KARA, PERUMBAVOOR VILLAGE, KUNNATHUNADU THALUK PERUMBAVOOR ERNAKULAM, PIN – 683 542.

BY ADVS.
P.P.BIJU
E.JIJOBAL

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN – 682 031.

BY ADV
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.5173 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.

2. Petitioners are the accused in Crime No.1797/CB/EOW/EKM/2024 of 2024 of Crime Branch, Ernakulam. The above case is registered against the petitioners alleging offences punishable under Sections 406, 408, 409, 417, 465, 467, 468, 471, 420 r/w Section 34 of the Indian Penal Code, 1860 (for short ‘IPC’).

3. The prosecution case is that the accused persons, who were the members of the administrative committee and employees of Perumbavoor Urban Co-operative Bank, in furtherance of their common intention to gain unlawfully and to cause loss to said

bank, by misusing their official powers, forged and created documents during the period of 2011-2016 and gave memberships to the unqualified persons and thereby disbursed loans without following the co-operative loan procedures and thereby cheated the Bank. Hence it is alleged that the accused committed the above said offences.

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

5. Counsel appearing for the petitioners submitted that the petitioners are in custody from 03.04.2025. The counsel submitted that the petitioners are ready to abide any conditions, if this Court grants them bail. The counsel also submitted that the co-accused were released on bail after arrest. Some of the accused’s bail applications were dismissed by this Court under Section 482 of BNSS, in which there is an interim order passed by the Hon’ble Apex Court.

6. Public Prosecutor opposed the bail application.

7. It is true that the allegations against the petitioners are serious. But, this application is filed after arrest under Section 483 of BNSS. Considering the facts and circumstances of the case, I think the petitioners can be released on bail after imposing stringent conditions. I also take into consideration the fact that the co-accused, who was arrested, is also released on bail by this Court as per Annexure V order.

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.

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/her 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

AMR