2025:KER:31266

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. 5194 OF 2025

CRIME NO.166/2025 OF Kurathikadu Police Station, Alappuzha

AGAINST THE ORDER/JUDGMENT DATED IN Bail Appl. NO.4630 OF 2025 OF HIGH COURT OF KERALA

PETITIONER(S)/ACCUSED NO.5:

GOKUL, AGED 21 YEARS, S/O GOPI , AMBOLIL HOUSE, CHOORALLOOR MURI, THEKKEKKARA VILLAGE, ALAPUZHA DISTRICT, PIN - 690503

BY ADV ABRAHAM SAMSON

RESPONDENT(S)/STATE:

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

BY ADV.
SRI. G SUDHEER, PP

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

2025:KER:31266

P.V.KUNHIKRISHNAN, J

B.A.No.5194 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. Petitioner is the 5th accused in Crime Nos.166/2025 of Kurathikadu Police Station, Alappuzha. The above case is registered against the petitioner and others alleging offences punishable under Sections 189(2), 190, 191(2), 191(3), 296(b), 118, 118(1), 118(2) & 109 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS').

3. The prosecution case is that, during the conduct of the 2024 yearly festival, at the time of the reception of the Bullock reception (Kettukala Ezhunallippu), there arose a dispute between the friend of the De-facto Complainant namely Appu K.G and 1st and 2nd accused, with respect to handing over of the Chendamelam, enmity erupted, resulting in retaliatory feeling

and to kill them they assembled unlawfully, they carried dangerous weapons, steel pipe on 7.3.2025 at about 9.30 pm, they assembled south side of the temple, the 1st accused inflicted injury on the top of the eye and the 2nd accused beat him, 3 to 4 accused kicked and threw him down and the accused 5 to 8 kicked him on the floor and beat him with their hands and attacked the defacto complainant. Hence it is alleged that the accused committed the above said offences.

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

5. Counsel for the petitioner submitted that the petitioner is the 5th accused and even if the entire allegations are accepted, there is no serious overt act attributed to the petitioner except the overt act of kicking the injured. The counsel submitted that the petitioner is in custody from 01.04.2025.

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

7. This Court considered the contentions of the

petitioner and the Public Prosecutor. It is true that the allegation against the petitioner is serious. But the overt act attributed to the petitioner, who is the 5th accused, is less when compared to the overt acts of the other accused. The petitioner is in custody from 01.04.2025. No criminal antecedents are alleged against the petitioner. Considering the facts and circumstances of the case, I think the petitioner can be released on bail after imposing stringent conditions. But I make it clear that this order is not applicable to the other accused, and if any bail application is filed by the other accused, the same will be considered in accordance with law. There can be a direction to the petitioner to appear before the Investigating Officer on all Sundays at 10 am, for a period of one month.

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. Petitioner shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One lakh 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 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. 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.

5. Petitioner shall appear before the Investigating Officer on all Sundays at 10 am, for a period of one month.

6. 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.

7. 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

DM