2025:KER:32198

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. 5222 OF 2025

CRIME NO.205/2025 OF Bekal Police Station, Kasargod

AGAINST THE ORDER/JUDGMENT DATED IN Bail Appl. NO.3346 OF 2025

OF HIGH COURT OF KERALA

PETITIONER/S:

MUHAMMED RAFI
AGED 35 YEARS
S/O HASSAN P,THEKKUPURAM HOUSE, POOCHAKKAD, KEEKAN VILLAGE, KASARAGOD, PIN - 671316

BY ADV SHIBA M SAMUEL

RESPONDENT/S:

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

2 **.THE STATION HOUSE OFFICER,**
BEKAL PS, PALAKUNNU, KASARAGOD, PIN - 671318

3 **MOHAMMAD KUNHI K M**
S/O. ABDUL RAHIMAN,ERLATH HOUSE, POOCHAKKADU, REHUMATH ROAD, KEEKKAN, KASARAGOD, NOW R/AT. ERATH HOUSE, ARAYALTHARA,KANDATHIL, POOCHAKKADU, KEEKKAN.P.O, PALLIKKARA VILLAGE, KASARAGOD DISTRICT., PIN - 671316

BY ADV
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.5222 of 2025

Dated this the 11th day of April, 2025

O R D E R

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

2. Petitioner is the accused in Crime No.205 of 2025 of Bekal Police Station, Kasargod. The above case is registered against the petitioner alleging offences punishable under Section 126(2), 118(1), 109 and 3(5) of Bharatiya Nyaya Sanhitha (for short'BNS').

3. The prosecution case is that on 19.02.2025 at 18:50 hours, Muhammad Kunhi, the elder brother of the petitioner, was traveling on a motorcycle from Poochkad to Chithari. When he reached in front of Chetukund Sarkar well at Keekan village, the accused Nos.1 to 4, traveling in a white I10 car, allegedly hit Muhammad

Kunhi's motorcycle, causing him to fall. It is alleged that the accused tried to assault Muhammad Kunhi with an iron rod. Hence it is alleged that the accused committed the offence.

4. Heard counsel for the petitioner, the counsel appearing for the victim and the Public Prosecutor.

5. Counsel appearing for the petitioner submitted that the petitioner is in custody from 20.02.2025. The counsel submitted that the petitioner is ready to abide any conditions, if this Court grants him bail.

6. Counsel appearing for the victim seriously opposed the bail application. The counsel submitted that even now the victim is bedridden and he sustained serious injuries.

7. Public Prosecutor also opposed the bail application.

8. Admittedly, the petitioner earlier filed a bail application before this Court as B.A. No.3346 of 2025. After hearing both sides, this Court was not inclined to grant bail to the petitioner. At that stage, the counsel for the petitioner seeks permission to withdraw the bail application with liberty to move it again. This Court granted liberty to move the bail application after three weeks. Accordingly, the present bail application is filed. It is true that the allegation against the petitioner is serious and serious injuries sustained to the victim. But, the petitioner is in custody from 20.02.2025. Indefinite incarceration of the petitioner is not necessary. But, the interest of the victim also has to be protected. There can be a direction to the petitioner not to enter the jurisdictional limit of Bekal Police Station for a period of two months. With that condition, this bail application can be allowed.

9. 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.

10. 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)

11. 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. 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. 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 not enter the jurisdictional limit of Bekal Police Station, Kasargod, for a period of two months.

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

AMR