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. 5262 OF 2025

CRIME NO.54/2025 OF Enath Police Station, Pathanamthitta

AGAINST THE ORDER/JUDGMENT DATED IN Bail Appl. NO.3747 OF 2025 OF HIGH COURT OF KERALA

PETITIONERS/ACCUSED NOS.3 AND 4:

1 SHANAVAS
AGED 33 YEARS
SON OF JAMAL, THAATHIL KIZHAKKETHIL HOUSE, PAZHAKULAM (P.O), PALLICKAL, PATHANAMTHITTA DISTRICT., PIN - 691554

2 ANSAR
AGED 32 YEARS
S/O. NISARUDEEN, POOVANNAMTHADATHIL HOUSE, NOORANAD, PALAMEL, ALAPPUZHA DISTRICT., PIN - 690504

BY ADV NIREESH MATHEW

RESPONDENT/COMPLAINANT-STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM, KOCHI., PIN - 682031
SRI HRITHWIK CS, 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.5262 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. Petitioners are the accused in Crime No.54/2025 of Enathu Police Station registered alleging offences punishable under Sections 20(b)(ii)(B), 29(1) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, NDPS Act).

3. The prosecution case is that, on 13.01.2025 at 9.30 PM, the Inspector of Police, Enathu detected the transportation of 6.075 kg of ganja by the 1st accused on a motor cycle bearing registration number KL-61/B-2819. The 1st accused was arrested and the contraband was seized. Upon questioning the 1st accused, it was confessed by him that it was the 3rd accused who sent the 1st accused to purchase ganja from the 2nd accused and the 4th accused provided his motor cycle to

purchase the said contraband. Hence it is alleged that the accused committed the offence.

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

5. The counsel for the petitioners submitted that the petitioners are in custody from 22.02.2025 and they are ready to abide any conditions if this Court grant them bail. The Public Prosecutor opposed the bail application and submitted that there are criminal antecedents to the petitioners under the NDPS Act itself.

6. The petitioners earlier filed a bail application before this Court as BA No.3747/2025. After hearing both sides, and also considering the fact that there is criminal antecedent to the petitioners, this Court was not inclined to grant to the petitioners. At that stage, the counsel for the petitioners sought permission to withdraw the bail application with liberty to move it again. This Court granted liberty to move it again after two weeks. Accordingly the present bail application is filed. It is true that there is criminal antecedent to the petitioners. But the quantity seized from the petitioners is

only intermediate quantity. In such circumstances, the rigour under Section 37 of the NDPS Act is not attracted. Considering the facts and circumstances of the case, I think the petitioners can be released on bail after imposing stringent conditions. I make it clear that if the petitioners are involved in similar offence in future, the Investigating Officer is free to file appropriate application for cancellation of bail and if such an application is received, the jurisdictional court is free to pass appropriate orders in that application even though this order is passed by this Court.

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. Petitioners shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties

each, 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

JV