2024:KER:94289

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 12TH DAY OF DECEMBER 2024 / 21ST AGRAHAYANA, 1946

BAIL APPL. NO. 9990 OF 2024

CRIME NO.1296/2024 OF HARIPPAD POLICE STATION, ALAPPUZHA

AGAINST THE ORDER/JUDGMENT DATED 30.11.2024 IN CMP NO.3136 OF 2024 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, HARIPAD

PETITIONER(S)/ACCUSED A2 TO A4:

1 **VIJITH V C**
AGED 40 YEARS
S/O VIJAYAN, PALAKULANGARA MADOM, THULAMPARAMBU SOUTH, DANAPADI HARIPPAD P.O , HARIPPAD VILLAGE, KARTHIKAPPALLY TALUK , ALAPPUZHA DISTRICT, PIN - 690514

2 **MANMADHAN G**
AGED 62 YEARS
S/O GOPINATHAN, PATHIRAMANALEL HOUSE, CHERUTHANA SOUTH MURI, CHERUTHANA VILLAGE, HARIPPAD P.O , HARIPPAD VILLAGE, KARTHIKAPPALLY TALUK , ALAPPUZHA DISTRICT, PIN - 690517

3 **SUNDARAM T V**
AGED 38 YEARS
S/O T V SUBRAMANYAN , SREEVIHAR HOUSE, CHIRAYILPADOM BHAGAM, KOTTAYAM TALUK, KOTTAYAM DISTRICT, PIN - 686001

BY ADVS.
P.VIJAYAKUMAR PUTHIYAKOVILAKOM
B.HARRYLAL(K/837/2009)

2024:KER:94289

RESPONDENT(S)/STATE AND COMPLAINANT:

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

2 **THE STATION HOUSE OFFICER**
HARIPPAD POLICE STATION, HARIPPAD, ALAPPUZHA DISTRICT,, PIN – 690514

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

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12.12.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2024:KER:94289

P.V.KUNHIKRISHNAN, J

B.A.No.9990 of 2024

Dated this the 12th day of December, 2024

O R D E R

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

2. Petitioners are the accused in Crime No.1296 of 2024 of Harippad Police Station. The above case is registered against the petitioners alleging offences punishable under Sections 189(2), 191(2), 190, 331(4), 305(a), 334(1) & 324(3) of the BNS.

3. The prosecution case is that the defacto complainant was using a room situated on the opposite side of Harippad Boys Higher Secondary School after taking a lease for a period of 30 years from the 1st accused. On 25.11.2024 at 5 a.m., accused Nos.1 to 5 formed themselves into an unlawful assembly and trespassed into the office room of the defacto

complainant and committed mischief. It is also stated that the advocates coat, gown and files were thrown to the road. The name board of the lawyer in front of the office was also thrown away. It is also the case of the defacto complainant that the cheque book, pass book and an amount of Rs.2,700/- were also taken by the accused and the defacto complainant sustained a loss of Rs.30,700/-. Hence it is alleged that the accused committed the above said offences.

4. Heard Adv. P.Vijayakumar, the learned counsel appearing for the petitioners and the learned Public Prosecutor. Adv. Yeshwanth Shenoy, who is the President of Kerala High Court Advocates' Association appeared as an intervenor in this case.

5. Counsel for the petitioners submitted that all the allegations against the petitioners are incorrect. The only non-bailable offences alleged against the petitioners are under Section 331(4) and 305(a) of the BNS. The petitioners were arrested and they are in custody from 29.11.2024. The counsel

submitted that the petitioners are ready to abide any conditions if this Court grant them bail.

6. The Public Prosecutor opposed the bail application. The Public Prosecutor made available the Case Diary and based on the scene mahazar of the incident it is submitted that the petitioners trespassed into an advocate office and committed mischief.

7. Adv. Yeshwanth Shenoy who is the President of Kerala High Court Advocates' Association submitted that the entire members of the Bar, in which the defacto complainant is practicing, together agitating against this vandalism from the petitioners. Adv.Shenoy submitted that, when the Bar is part of the Bench, if any criminal offence is committed against a lawyer or towards his office, that amounts to interfering the administration of justice. Therefore, Adv. Shenoy submitted that this Court may not entertain this bail application. Adv. Shenoy also submitted that the petitioners committed the offence early morning when there was nobody in the office of the defacto

complainant.

8. This Court considered the contentions of the petitioners and the Public Prosecutor. This Court also considered the arguments of Adv. Shenoy. It is true that the allegation against the petitioners are very serious. If the defacto complainant is occupying a room of the petitioners without any authority, their remedy is to approach the jurisdictional civil court. The petitioners have no right to take law into their hands. I think there is force in the argument of Adv. Shenoy. The counsel appearing for the petitioners submitted that Adv. Yeshwanth Shenoy has no right to intervene in this case because he is not even impleaded in this case. But Adv. Shenoy submitted that he is appearing in this case on behalf of the Kerala High Court Advocates' Association and he is authorised to appear. I am happy to see that, when there is a grievance to a lawyer, the lawyer community is coming together and even the High Court Association is taking steps to support the lawyer community. The same is to be appreciated. But the main

offences alleged against the petitioners are under Sections 331(4) and 305(a) of the BNS. The maximum punishment that can be imposed for the above offence is only up to 7 years. The Apex Court in **Arnesh Kumar v. State of Bihar and Another** [2014 (8) SCC 273] observed that, even while considering an application for anticipatory bail, the court should take a lenient view if the punishment that can be imposed is only up to 7 years. It will be better to extract the relevant portion of the above judgment:

> "7. xxxxxxxxx
>
> 7.1. From a plain reading of the aforesaid provision, it is evident that all person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case, or to prevent the accused from causing

the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer, or unless such accused person is arrested, his conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes, envisaged by sub-

clauses (a) to (e) of clause (1) of Section 41 CrPC."

9. In the light of the above principle, this Court considered the contentions of the petitioners. I think the petitioners can be released on bail after imposing stringent conditions. The petitioners are in custody from 29.11.2024 onwards. There can be a direction to the petitioners to appear before the Investigating Officer on all Mondays at 10 A.M. till final report is filed.

10. 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.

11. 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)

12. 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"."

13. 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. Petitioners shall appear before the Investigating Officer on all Mondays at 10 A.M. till final report is filed.

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

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