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'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 11TH DAY OF FEBRUARY 2025 / 22ND MAGHA, 1946

BAIL APPL. NO. 10332 OF 2024

PETITIONER/S:

SHIBIN SHIYAD
AGED 26 YEARS
PARIUTHIKUZHI HOUSE, S.H. MOUNT, NATTASSARY,
KOTTAYAM, PIN - 686006

BY ADVS.
FRANCIS ASSISI
AJEESH S.BRITE
DARSANA

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA FOR KOTTAYAM EAST POLICE STATION, PIN -
682031

SRI.HRITHWIK C.S., SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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'CR'**P.V.KUNHIKRISHNAN, J****B.A. No.10332 of 2024****Dated this the 11th day of February, 2025****O R D E R**

Whether the police officer in Mufti can arrest a person without showing his identity card is the question to be decided in this bail application.

2. This Bail Application is filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita (for short 'BNSS') by the accused in Crime No. 1482/2024 of Kottayam East Police Station. The petitioner is the 1st accused. The above case is registered against the petitioner and others alleging offences punishable under Secs. 189(2), 191(2), 191(3), 190, 115(2), 132, 123 and 121(1) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS').



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3. The above case is registered based on the statement given by the Grade Sub Inspector, Antony Michael attached to Vakathanam Police Station. The statement was given on 24.10.2024 at 8.30 pm. According to the Sub-Inspector, he and CPO 8130 Shebin Peter were on Mufti duty in connection with the NDPS Special Drive. They were travelling on a motorbike within the jurisdiction of their Police Station. On that day, at 4.30 pm, when they reached Kaithepalam bridge, they joined duty with the mobile party of Kottayam East Police Station. At that time, the defacto complainant and the policeman accompanying him found two persons going on a bike and when there was a suspicion about them, the defacto complainant and the accompanying policeman followed them. At that time, they saw the persons, who were on the bike chatting with three other individuals. The defacto complainant and the accompanying policeman stopped the bike and informed them that they were policemen and asked them why they



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were standing there. At that time, it is stated that two of them sprayed a liquid on their face and body. Thereafter, they ran away from the place. Subsequently, the East Police Station SI and the police party stopped three persons among them. The defacto complainant and the accompanying police constable went to the hospital for treatment. Hence, it is alleged that the accused persons wrongfully restrained and deterred the public servants from discharging their official duty. Hence, it is alleged that the accused committed the offences.

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

5. The counsel for the petitioner submitted that the only non-bailable offences alleged are under secs. 132, 123, and 121(1) BNS. It is submitted that even if the entire allegations are accepted, the above offences are not attracted. The main point raised by the counsel for the petitioner is that the policemen were in Mufti and they did



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not show their identity cards to the accused. Unless the same is shown, they cannot claim the benefit of Sec. 132 and 121(1) of the BNS, when they are in mufti is the submission. The Public Prosecutor seriously opposed the bail application. The Public Prosecutor submitted that it is a clear case in which the petitioner and the other accused assaulted the public servants when they were discharging their official duty. The Public Prosecutor also made available the wound certificate of the injured and submitted that the offences under Secs. 132 and 121(1) are made out. It is also submitted that pepper spray is used by the accused and therefore, Sec. 123 of the BNS is also attracted.

6. When this case came up for consideration, this Court requested the Public Prosecutor Sri. Hrithwik CS to address the point raised by the counsel for the petitioner. The Public Prosecutor submitted that Mufti policing is necessary in certain situations. The Public Prosecutor



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submitted that, if a police officer in uniform reaches a place, in some cases, the accused would escape immediately. Therefore, Mufti policing is necessary, especially in drug cases. The Public Prosecutor took me through the Government order constituting the Narcotic Special Action Force to tackle the drug-related crimes and the order renaming it as 'Anti Narcotic Task Force'. The Public Prosecutor submitted that in narcotic cases, Mufti policing is necessary to find out the culprits. This Court directed the Public Prosecutor to again verify the provisions in which Mufti policing is permitted as per law. The Public Prosecutor again sought time and the case was adjourned. Thereafter, the Public Prosecutor submitted that Sec. 294 of the Kerala Police Manual says about Mufti Patrols.

7. This Court considered the contentions of the petitioner and the Public Prosecutor. Admittedly, there is no mention of Mufti policing in BNSS or in the Kerala



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Police Act. This Court in ***Avinash v. State of Kerala*** [2021

(6) KLT 354] observed like this :

13. *“The uniform of a policeman is his direct identification. A policeman in uniform is visible and a citizen immediately knows that he is a policeman which will inform that the said individual is in charge of his protection and prevention of offences. It carries an undeniable symbolic value besides representing the State authority. The police uniform also symbolises pride, respect and authority over the citizens.*

14. XXXX XXXX XXXX XXXX

15. XXXX XXXX XXXX XXXX

16. XXXX XXXX XXXX XXXX

17. *Since the police officer takes pride in his/her uniform and the visibility of a police officer is very critical for the police and society, the requirement of wearing the same while on duty except where deviations are permissible, shall be scrupulously observed.*

18. *I direct the State Police Chief to look into the matter and issue appropriate directions to ensure that the police officers comply with the relevant statutory provisions/guidelines making it mandatory to wear the uniform while on duty except when it is permissible under law to deviate from the said mandatory requirement.”*

8. In the light of the above dictum, the policemen



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should be in uniform, while discharging their duty. The Public Prosecutor relied on Sec. 294 of the Kerala Police Manual. It will be better to extract the same.

*294. "All Policemen on beat or patrol duty should perform their duties in uniform **unless for special and limited purposes mufti patrols are specifically ordered**. That the lathie is an essential part of the uniform of a Police constable should also be never overlooked." (emphasis supplied)*

9. A reading of the same would show that, all policemen on beat or patrol duty should perform their duty in uniform unless, for special and limited purposes, mufti patrols are specifically ordered. Therefore, even as per Sec. 294 of the Kerala Police Manual, Mufti policing is possible only for special and limited purposes and that also with specific order to that effect.

10. Nowadays, several criminal activities like defrauding people are done by criminals using uniforms of police, customs, CBI etc. Even the name boards of Judges



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in vehicles are misused by the criminals to commit offences. Therefore, the police department should be aware that the general public is aware of these types of criminal activities by misusing the uniform of police, customs, CBI etc. They may question the people coming in Mufti claiming that they are police officers. Therefore, if in any special situation, Mufti policing is necessary, a specific order to that effect is to be passed. Moreover, the Mufti police people should carry their identity cards and a copy of the order authorising them to do the duty in mufti. They should introduce themselves as policemen and also show their identity cards before intercepting or questioning the suspected people. Without the same, if the public questions a mufti police, nobody can blame them. Mufti police may be more vulnerable to physical harm or attack, as they are not easily recognizable. Kerala is a state where literacy rate is high. Most of the people are sensitive. Therefore policemen should be vigilant while doing mufti policing to protect



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themselves also.

11. In the present case, the Public Prosecutor submitted that the defacto complainant and the accompanying police officer were doing Mufti policing based on order No. 567/GL/DCRB/2024/K dated 15.10.2024 of District Police Chief, Kottayam. This Court directed the Public Prosecutor to produce the same and the Public Prosecutor made available the same. The same is extracted hereunder :

“TO : ALL SHOS IN KOTTAYAM DISTRICT
INFO : ALL SDPOS IN KOTTAYAM DISTRICT
FROM : DPC KOTTAYAM

NO. 567/GL/DCRB/2024/K DATE 15.10.2024

വിഷയം : NDPS - SPECIAL DRIVE 18.10.2024 തീയതി മുതൽ
25.10.2024 തീയതി വരെ നടത്തുന്നത് സംബന്ധിച്ച് :

ജില്ലയിലെ പോലീസ് സ്റ്റേഷനുകളിൽ NDPS-മായി ബന്ധപ്പെട്ട്
18.10.2024 തീയതി മുതൽ 25.10.2024 തീയതി വരെ (8 ദിവസം)
SPECIAL DRIVE നടത്തേണ്ടതാണ്. ആയതിലേക്കുള്ള ദൈനംദിന
റിപ്പോർട്ട് പിറ്റേ ദിവസം രാവിലെ 05.00 AM ന് മുൻപായി സബ് ഡിവിഷൻ
തലത്തിൽ Consolidate ചെയ്ത് കോട്ടയം ഡി.സി.ആർ.ബി-യിലേക്ക്
അയച്ച് നൽകേണ്ടതാണ്.



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SPECIAL DRIVE നടത്തുന്നതിലേക്ക് ജില്ലയിലെ എല്ലാ SDPO-മാരും, SHO-മാരും പ്രത്യേകം ശ്രദ്ധ ചെലുത്തേണ്ടതും, ആയതിലേക്കുള്ള അനുവർത്തന റിപ്പോർട്ട് യഥാസമയം അയക്കുന്നുണ്ടെന്ന് ഉറപ്പ് വരുത്തേണ്ടതുമാണ്.

SPECIAL DRIVE AS ON.....

SL NO	POLICE STATION	CRIME NO	SECTION OF LAW	DATE OF REPORT	NAME & ADDRESS OF THE ACCUSED	Quantity of Narcotic substances seized

For DPC Kottayam”

12. A perusal of the above would only show that a special drive is to be conducted from 18.10.2024 to 25.10.2024 in connection with the NDPS cases. In the above order, there is nothing to show that the District Police Chief, Kottayam specifically ordered to discharge the duty in Mufti policing. The Public Prosecutor submitted that, based on the above order, the defacto complainant and the policeman conducted the Mufti duty. If that is the



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case, there is no other order as contemplated in Sec.294 of the Kerala Police Manual. In such circumstances, it is difficult to accept the contention of the prosecution that the defacto complainant and the accompanying police officer were doing Mufti duty with proper orders from their higher authorities.

13. Moreover, a perusal of the FI statement of the defacto complainant would only show that when he and the accompanying policeman questioned the assailants in this case, they identified themselves as policemen but no identity cards were shown. In such circumstances, I am of the considered opinion that it is difficult to say that the accused were aware that the defacto complainant and the accompanying officer were policemen, while committing the assault.

14. But, the offences alleged against the petitioner and others include the offence under Sec. 123 BNS which says about causing hurt by means of poison etc. with intent



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to commit an offence. A perusal of the FI statement would not show that the defacto complainant has got any case that the liquid used by the accused is pepper spray. Moreover, at this stage, it cannot be said that the accused committed any offences. The investigation is going on. I do not want to make any observations about the same. The investigating officer is free to investigate the matter. Similarly, the observation made in this order about the facts of this case is only for the purpose of deciding this bail application and the facts in this case are to be investigated by the investigating officer, untrammelled by any observation in this order about the facts. When a point is raised in a bail application, it is the duty of the court to consider the same. The finding about the facts of this case is only for prima facie finding for deciding this bail application. Therefore I am once again reiterating that the investigating officer is free to investigate the facts of this case untrammelled by any observation in this order. But,



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the general principle that Mufti policing should be based on a specific order and Mufti police should show their identity cards and keep the order authorising them for mufti policing with them, if they want to question a person, will stand.

15. Considering the facts and circumstances of this case, and also in the light of the above discussion, I think the petitioner can be released on bail, after imposing stringent conditions. 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.

16. Recently the Apex Court in **Siddharth v State of**



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Uttar Pradesh and Another [2021(5)KHC 353]

considered the point in detail. The relevant paragraph of the above judgment is extracted hereunder.

“12. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. (Joginder Kumar v. State of UP and Others (1994 KHC 189: (1994) 4 SCC 260: 1994 (1) KLT 919: 1994 (2) KLJ 97: AIR 1994 SC 1349: 1994 CriLJ 1981)) If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.”

17. In **Manish Sisodia v. Central Bureau of**



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Investigation [2023 KHC 6961], the Apex Court observed that even if the allegation is one of grave economic offences, it is not a rule that bail should be denied in every case.

18. Considering the dictum laid down in the above decisions and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The petitioner shall appear before the Investigating Officer within three weeks from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose to arrest the petitioner, he shall be released on bail on executing a bond for a sum of Rs.50,000/-(Rupees Fifty Thousand only) with two solvent sureties each for the like



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sum to the satisfaction of the arresting officer concerned.

3. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner shall cooperate 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.

4. Petitioner shall not leave India without permission of the jurisdictional Court.

5. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the



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commission of which he is suspected.

6. Needless to mention, it would be well within the powers of the investigating officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in ***Sushila Aggarwal v. State (NCT of Delhi) and another*** [2020 (1) KHC 663].

7. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court. The prosecution is at liberty to approach the jurisdictional Court to cancel the bail, if any of the



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above conditions are violated.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

SKS