



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 19TH DAY OF MARCH 2025 / 28TH PHALGUNA, 1946

BAIL APPL. NO. 3782 OF 2025

CRIME NO.40/2025 OF GURUVAYOOR TEMPLE POLICE STATION, Thrissur

AGAINST THE ORDER/JUDGMENT DATED 10.03.2025 IN CRMP NO.1191
OF 2025 OF JUDICIAL MAGISTRATE OF FIRST CLASS, CHAVAKKAD

PETITIONER(S)/ACCUSED:

SREERAJ R
AGED 32 YEARS, S/O RAJENDRA KAIMAL, ANADABHAVAN
THAYAMKARI EDATHUVA ALAPPUZHA, PIN - 689 573

BY ADVS.
R.KRISHNA RAJ
R.PRATHEESH (ARANMULA)
E.S.SONI
SREERAJA V.
LAXMI PRIYAA N.P.
RAJEESH V.R.

RESPONDENT(S)/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 031
- 2 STATION HOUSE OFFICER
GURUVAYUR TEMPLE POLICE STATION GURUVAYUR P.O.
THRISSUR, PIN - 680101

BY ADV.:

SR PP-HRITHWIK C S

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
19.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



P.V.KUNHIKRISHNAN, J

B.A.No.3782 of 2025

Dated this the 19th day of March, 2025

ORDER

This Bail Application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

2. Petitioner is an accused in Crime No.40 of 2025 of Guruvayoor Temple Police Station, Thrissur. The above case was originally registered under Section 192 of the Bharatiya Nyaya Sanhita (BNS), 2023, which was later converted to 196(1)(a) of BNS. The offence under Section 120(o) of the Kerala Police Act is also alleged.

3. The prosecution case is that, the accused being the Instagram and Facebook account holder, on 12.01.2025 uploaded a video in which it appears that one Abdul Hakkim is insulting "Thulasi plant". According to the prosecution, the above Abdul Hakkim is a mentally ill person.



It is alleged that the petitioner shared that video to promote enmity between religion. Hence, the offence under Section 196(1)(a) of BNS and Section 120(o) of the Kerala Police Act is alleged.

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

5. Counsel for the petitioner submitted that the petitioner only shared a video which is available in the Social media. The counsel submitted that a pen drive of the video is produced along with this bail application. The counsel submitted that no action is taken against the person who committed the mischief stating that he is a mental patient. Now the case is registered against the petitioner and he is put behind the bar. The counsel for the petitioner also submitted that, the allegation to the effect that, the petitioner shared the video in the Instagram and in the Facebook account is not factually correct. Those accounts are not owned by the petitioner. The counsel submitted that it is a false case foisted against the petitioner and he is put behind the bar



without any reason.

6. The Public Prosecutor submitted that the petitioner is involved in three other cases in which the offences alleged are 153A of IPC.

7. This Court perused the pen drive produced by the petitioner. A perusal of the same would not *prima facie* show that the person who committed the same is having any mental issue. Admittedly no action is taken against that person by the police authorities. “Thulasithara” is a sacred place as far as Hindu religion is concerned. In the video, it can be seen that, the above Abdul Hakkim plucked hairs from his private part and putting it in the “Thulasithara”. It will definitely infringe the sentiments of Hindu religions. It seems that, no case is registered against Abdul Hakkim. It seems that he is the owner of a Hotel in the premises of Guruvayoor Temple. Even now that hotel is functioning, in which it seems that the person who committed the mischief is continuing as the owner and license holder. The counsel for the petitioner also submitted that he is even having a driving license. Such



a person is set free by the police without registering a case and the petitioner herein is arrested and put behind the bar. I am of the considered opinion that the police should take appropriate action against Mr. Abdul Hakkim, in accordance with law. From the facts it is not clear whether he is a mental patient. Even if he is a mental patient, how he is continuing as the licensee of a hotel which is situated within the premises of Guruvayoor Temple, is a question to be investigated by the Investigating Officer. The counsel for the petitioner submitted that he is having a driving license. If he is a mental patient, how he is allowed to drive the vehicle is also a matter to be investigated by the Investigating Officer. I am of the considered opinion that the petitioner is entitled bail in this case.

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.”

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 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. *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 petitioner, the jurisdictional Court can cancel the bail in accordance to 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 there is any violation of the above conditions.*

Sd/-

**P.V.KUNHIKRISHNAN,
JUDGE**