

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

THURSDAY, THE 23RD DAY OF JUNE 2022 / 2ND ASHADHA, 1944

BAIL APPL. NO. 4734 OF 2022

CRIME NO.511/2022 OF Valiyathura Police Station, Thiruvananthapuram

PETITIONER/3rd ACCUSED:

SUJITH NARAYANAN, AGED 34 YEARS
SON OF M.M.NARAYANAN, RESIDING AT CHANDRALAYAM,
KUNNOTH, PATTANNUR P.O, KANNUR, PIN - 670595

BY ADVS.
V.S.CHANDRASEKHARAN
LEKSHMI SWAMINATHAN
SAJNA T.UMMER
S.JAYAKUMAR
SHAHIM BIN AZIZ
C.A.SABITHA
M.V.DAS
SADIQALI.M
M.A.JINSA MOL

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 THE STATION HOUSE OFFICER
VALIYATHURA POLICE STATION, VALIYATHURA,
THIRUVANANTHAPURAM DISTRICT, PIN - 695108

BY
SRI.T.A.SHAJI, DIRECTOR GENERAL OF PROSECUTION (AG-10)
SRI.P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC PROSECUTOR()

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23.06.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VIJU ABRAHAM, J.

.....
BA No.4734 of 2022
.....

Dated this the 23rd day of June, 2022

ORDER

This is an application seeking anticipatory bail.

2. Petitioner is arrayed as accused No.3 in Crime No. 511 of 2022 of Valiyathura Police Station alleging commission of offences punishable under Sections 120B, 332, 307, 34 of the Indian Penal Code, Section 11A of the Aircraft Act 1934, Rule 22 of the Aircraft Rules, 2012 and Section 3(1)(a) of the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982.

3. The prosecution allegation is that on 13.06.2022 at 5.00 p.m. aboard the flight No.6E-7407 Indigo, the accused persons including the petitioner by defying the directions of the aircraft crew, shouted threats and rushed toward Mr.Pinarayi Vijayan, the Hon'ble Chief Minister of Kerala, who was occupying seat No.20A of the same flight, posed threat to his safety and security of the aircraft and attempted to commit murder. It is also alleged that the petitioner and his companions caused hurt to the informant, the security staff of the Chief Minister, and deterred him from discharging his public duty and thus committed the offences alleged.

4. Adv. V.S. Chandrasekharan, learned counsel appearing for the petitioner contended that the allegations made against the petitioner are false and that he was a bonafide passenger travelling from Kannur to

Thiruvanthapuram. At about 17:00 hours when the flight landed at Thiruvanthapuram airport when the passengers started alighting, two passengers who are workers of Youth Congress and who are known to the petitioner, shouted some political slogans, and thereupon Shri. E.P Jayarajan, former minister and presently convenor of the LDF pushed them back with force and the two passengers fell to the floor of the aircraft. Petitioner went out of the airport premises and met his relatives in a hospital and thereafter he returned to Kannur by train on the same day. Petitioner is not involved in any way with the alleged incident. Petitioner apprehends that he will be arrested in connection with the crime. None of the offences alleged are attracted in the present case. The case of the petitioner is that he is falsely implicated and the attempt now made is to prevent the petitioner from becoming a witness to the incident and spoke about the brutal assault committed by Shri. E.P Jayarajan on the aforesaid two persons, which he recorded in his mobile phone.

5. It is further submitted that no manner of violence or other untoward incident occurred on board as alleged by the prosecution. There is no allegation that the petitioner disobeyed any of the directions of the aircraft authorities as alleged so as to attract any of the offences under the Indian Aircraft Act. A perusal of contents in the FIR, as well as the remand report, would reveal that there is no chance of use of force by the petitioner on board against the Hon'ble Chief Minister and that by no

stretch of imagination, mere raising slogans can be portrayed as an attempt to attack the Hon'ble Chief Minister, so as to attract the offences alleged and that the petitioner has not committed any such overt act. There was no act of violence against any person on board the aircraft, in flight that endangered the safety of the aircraft and therefore, provisions of Section 3(a) of the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 is not applicable. The counsel for the petitioner submitted that the only information intimated to the police authorities by the airport manager is about an altercation that took place on the board of the flight between three passengers who were seated on seats Nos.8A, 8C and 7D. Petitioner further contended that in a further communication issued by the airport manager to the police in which also there is mention about an altercation that took place on board the aircraft and further intimated that three passengers on board the flight stood up from their respective seats and ran towards the Hon'ble Chief Minister shouting slogans in their vernacular language and upon seeing this one of the passengers travelling with the Hon'ble Chief Minister intervened. Based on the said submission, it is contended that those are the information conveyed by the authorities at the first point of time which does not convey the commission of any offences as alleged against the petitioner. It is further submitted by the counsel for the petitioner that the contents of the FI statement also do not attract any of the offences alleged against him. It is the case of the petitioner that when the gist of

the FI statement was entered in the FIR, the investigating officer has given an improved version that would show the falsity of the allegation. Learned counsel for the petitioner submitted that the other accused were brutally manhandled.

6. The learned Director General of Prosecution Sri.T.A.Shaji submitted that the acts alleged to be committed by the petitioner are part of a conspiracy to attack and murder the Hon'ble Chief Minister and to fulfill their common object. On 13.06.2022, while the Hon'ble Chief Minister of Kerala was travelling from Kannur to Thiruvananthapuram in Indigo flight No. 6E 7407, the petitioner along with accused No. 1 and 2 intentionally travelled in the same flight and when the flight was about to land, all the accused persons walked inside the flight raising political slogans and rushed to seat No. 20A where the Hon'ble Chief Minister was sitting and shouted at him that they will not allow him to survive and by the time personal security officer tried to restrain their act, the petitioner along with the accused no. 1 and 2 manhandled him and voluntarily caused hurt to deter the public servant from doing his duty and also attempted to murder the Hon'ble Chief Minister. It is submitted that all the accused were named in the FIR and the call data showed that the accused were in constant touch for several days and that the tickets were purchased at the same time and the same was booked using the phone of the 1st accused and the tickets were collected by the 2nd accused. It is further submitted that the CCTV footage of the Kannur Airport will reveal

that all the accused persons came together from Kannur. It is further submitted that the petitioner is involved in 2 other criminal cases. It is also submitted that the behaviour of the accused from the time they entered the aircraft was suspicious and the same was noticed by the personal security officers of the Hon'ble Chief Minister. Learned Director General of Prosecution further submitted that the investigation is in progress and the custodial interrogation of the petitioner is absolutely necessary to unearth the criminal conspiracy.

7. It is the further case of the petitioner that provisions of Section 11A of the Aircraft Act are not applicable in the facts of this case in as much as Section 11A of the said Act is about punishment for willful non-compliance with the directions issued under Section 5A of the Act. Section 5A specifically mandates that the Director General of Civil Aviation or any other officer specifically empowered on this behalf by the central government in this regard may issue order or direction in respect of matters specified in Clauses (aa), (b) (c) (e) (f) (g) (ga) (gb) (gc) (h) (i) (m) and (qq) of Sub-section (2) of Section 5 of the Act to any person or persons using any aerodrome or engaging in the aircraft operations, air traffic control, maintenance and operation of aerodrome, communication, navigation, surveillance and air traffic management facilities and safeguarding civil aviation against acts of unlawful interference, in case where the Director General of Civil Aviation or such other officer is satisfied that in the interest of the security of India or for securing the

safety of aircraft operation and such direction shall be complied with by the person or persons to whom such direction is issued. It is the contention of the petitioner that a perusal of the same will show that these are essentially directions issued to operators or other persons for securing the safety of aircraft operations. Rule 22 of the Aircraft (Investigation of Accidents and Incidents) Rules, 2017 is also incorporated in the FIR. It is contended that the FIS or the FIR is silent regarding any violation of the said rule whereby the petitioner is liable for the penalty mentioned in Rule 22. As regards the alleged violation of Section 3(1) of the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 contention of the petitioner is that the said section is not applicable in the facts of the present case in as much as the same is regarding punishment for unlawfully and intentionally committing an act of violence against a person on board of an aircraft, in flight which is likely to endanger the safety of such aircraft and contended that the act of violence if any should be likely to endanger the safety of aircraft and that none of the ingredients of the said section is attracted in the present case. The specific contention of the petitioner is that raising slogans in protest of certain allegations against the Hon'ble chief minister will not attract any of the offences alleged. It is the contention of the counsel for the petitioner that he has absolutely no involvement in the alleged crime, which is evident from the fact that he was not apprehended and left the flight like any other passenger. Petitioner has a case that he has been

falsely implicated in the crime to prevent him from being a witness and for the reason that he has recorded the incident in his mobile phone. It is further contended that since the petitioner is inside an aircraft which is a high-security area, there is no chance for him to carry any weapons for the commission of the offence alleged and this itself will prove the falsity of the allegation that the petitioner has attempted to commit murder, attracting commission of an offence punishable under Section 307 IPC. Since there was no attempt on his part to do any illegal act, the provisions of Section 332 IPC is also not attracted. The accused Nos. 1 and 2 are already arrested on 14.06.2022 and the Sessions Court has also granted their custody to the investigating agency.

8. It will be relevant to note the parameters laid down by this court as well as the Apex Court in the matter of granting bail. This Court in **Gopinathan Pillai & others v. State of Kerala, 1969 KLT 841** held thus.

"6. Pre-trial detention has a purpose and policy and, therefore, the issue of bail or jail must be decided on relevant criteria and not on emotionally appealing but legally impertinent circumstances. While deprivation of liberty is a sequel to conviction, antecedent incarceration amounts to punishment without trial, unless justified on some civilized principles bearing on the administration of justice. The infliction of humiliation, the cruelty of jail life and the prejudice suffered by a party in the conduct of his defence do irreparable damage to a man and it is poor comfort to be told that he would be acquitted ultimately if he were really innocent. That is why Courts have to take conscientious care not to be deflected by sentiment or scared by ghastliness but to be guided by the high principle that public justice shall not be

thwarted and the course of the trial defeated or delayed by the accused person, be he high or low. This being the perspective, purpose and policy regarding bail, I must agree with counsel for the petitioners that the high death roll, very regrettable though, cannot stampede a Court into refusal of bail and the longer casualty list on the other side cannot weigh against the accused."

The Apex Court in ***State of Rajasthan v. Balchand, (1977) 4 SCC 308***, held thus.

"2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative."

The Apex Court has reiterated the said position in ***P. Chidambaram vs Directorate Of Enforcement, (2020) 13 SCC 791*** which held 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. There is no case for the prosecution that the petitioner was carrying any weapon and admittedly petitioner being inside an aircraft, which is a high security zone, there is no possibility for the petitioner to carry any weapon also. Two of the accused are already arrested on 14.06.2022 and the Sessions Court has also granted custody of the accused to the investigating agency and they have been questioned. If any recovery is to be made it is always open for the investigating officer

to do that even when the petitioner is on bail. [See paragraph 84 Clause (g) of the decision of the Apex Court in ***Sushila Aggarwal v. State (NCT of Delhi) reported in 2020 (1) KHC 663 (SC)***. Report of the Airport Manager to the Station House Officer, Valiyathura Police Station, which is the first in point of time, only says that they were informed that an alleged altercation took place on board the flight between three passengers who were seated on Seat No. 8A, 8C and 7D. A subsequent report by the Airport Manager dated 14.06.2022 also revealed that after landing as soon as seat belt sign went off, the said passengers immediately stood up from their respective seats and rushed toward the Hon'ble Chief Minister, shouting slogans in the vernacular language and upon seeing this one of the passengers travelling with the Hon'ble Chief Minister intervened. At the time of the incident referred to by the airport manager happened, the aircraft had several passengers including the personal security officers of the Hon'ble Chief Minister. A further fact to be noted is that while two other accused who are alleged to have been involved in the incident were arrested there was no attempt to arrest the petitioner and the petitioner went out of the aircraft like any other passenger. In so far as there is no case that the motive for the alleged incident is of any personal enmity and it was a part of an agitation, there is no reason to believe that the petitioner will repeat the alleged offence. Though at this stage of the case, I cannot express my opinion either way as regards the merits of the case, the above stated facts cannot be lost sight of while

considering the request of the petitioner for pre-arrest bail. As regards the contention of the learned Director General of Prosecution that custodial interrogation of the petitioner is required to unravel the larger conspiracy, I am not persuaded to think that custodial interrogation of the petitioner is required for that purpose, also considering the fact that two other accused is already in judicial/police custody and are thoroughly interrogated. It is pertinent to note that the petitioner is alleged to have been involved in 2 cases but it does not appear to be very serious. Though the prosecution apprehends that petitioner will flee justice/tamper evidence, such apprehensions can be allayed by imposing conditions. Regarding the contention of the learned Director General of Prosecution that the petitioner has to be interrogated to unearth any conspiracy involved, I feel that the petitioner should make himself available to the police for interrogation. As regards the rigor of Section 6A of The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 in the matter of grant of bail, it is seen that in Section 6A of the Act, restrictions are imposed on the court (not being the High Court) in the matter of grant of bail to an accused who is in custody and therefore the said rigor will not be applicable in the matter of consideration of pre-arrest bail.

Considering the facts and circumstances of the case and the nature of the allegations, I feel that custodial interrogation of the petitioner is not necessary, but taking into consideration the contentions

raised by the prosecution that the investigation is only in the initial stage and further investigation is to be done to unearth any conspiracy involving other persons, I feel that there should be a direction that the petitioner shall co-operate with the investigation. Therefore, I am inclined to grant bail to the petitioner on stringent conditions. Therefore, the application for anticipatory bail is allowed as under:

The petitioner shall surrender before the investigating officer on 28.06.2022 at 10 a.m. for interrogation. In case the interrogation of the petitioner is not completed that day, it is open to the investigating officer to direct the presence of the petitioner on any other day/days and time which the petitioner shall comply. The petitioner shall co-operate with the investigation of the case. In case the petitioner is arrested in connection with the above crime, he shall be produced before the jurisdictional court on the very same day and he shall be released on bail on the following conditions:

(i) Petitioner shall be released on bail on executing a bond of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties for the like sum to the satisfaction of the jurisdictional court.

(ii) Petitioner shall appear before the investigating officer as and when required and shall co-operate with the investigation.

(iii) Petitioner shall surrender his passport. If he does not have a passport, he shall file an affidavit to that effect before the jurisdictional court, within a period of one week from the date of release.

(iv) The petitioner shall not attempt to interfere with the investigation or to influence or intimidate any witness in Crime No. 511 of 2022 of Valiyathura Police Station.

(v) Petitioner shall not enter Thiruvanthapuram District till filing of charge sheet except to comply with condition No.(ii) or to attend any court proceedings.

(vi) The petitioner shall not involve in any other crime while on bail.

(vii) If any of the aforesaid conditions are violated, the investigating officer in Crime No.511 of 2022 of Valiyathura Police Station, may file an application before the jurisdictional court, for cancellation of bail.

It is made clear that it is within the power of the police to investigate the matter and if necessary, effect recoveries on the information if any given by the petitioner, even when the petitioner is on bail. [See paragraph 84 Clause (g) of the decision of the Apex Court in ***Sushila Aggarwal v. State (NCT of Delhi) reported in 2020 (1) KHC 663 (SC)***].

Sd/-

**VIJU ABRAHAM
JUDGE**