

W.P.(Crl.) No. 795 of 2025



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 12TH DAY OF DECEMBER 2025 / 21ST AGRAHAYANA, 1947

WP(CRL.) NO. 795 OF 2025

CRIME NO.871/2023 OF VALIYATHURA POLICE STATION,
THIRUVANANTHAPURAM

PETITIONER:

APPLE BARUA
AGED 26 YEARS, S/O GOPAL BARUA,
PERMANENTLY RESIDING AT RANGAMATI BAZAR,
BARDHUARA, SATHKHANIYA, CHITTAGONG,
BANGLADESH AND PRESENTLY DETAINED AT
TRANSIT HOME (DETENTION CENTRE),
MAYYANADU, KOTTIYAM, KOLLAM, PIN - 691571

BY ADV KUM.NIHARIKA HEMA RAJ

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 2 FOREIGNERS REGIONAL REGISTRATION OFFICER (FRRO)
AMRITH PLAZA, 1ST FLOOR, TC NO. 30/1398-3,
NALUMUKKU, PETTAH (P.O),
THIRUVANANTHAPURAM, PIN - 695024

BY ADVS.
O.M.SHALINA, DEPUTY SOLICITOR GENERAL OF INDIA
SMT.KRISHNA S., CGC
SRI.SANGEETHA RAJ, PP

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 12.12.2025, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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"C.R."

J U D G M E N T

The legality of the condition imposed while granting bail to a foreign national, that he shall remain in the detention centre until the conclusion of the trial, falls for consideration in this writ petition.

2. The petitioner is a Bangladeshi National. He is the first accused in Crime No.871 of 2023 of Valiyathura Police Station. The offences alleged against him are punishable under Sections 465, 468, 471, 419 r/w 34 of IPC, Section 14(a) of the Foreigners Act, 1946, and Section 12(1A), 12(1)(b) of the Passport Act, 1967.

3. The prosecution case, in short, is that the petitioner, along with the second accused, forged some documents for the purpose of cheating, committed impersonation, used those documents to illegally obtain an Indian passport and tried to exit India through Thiruvananthapuram International Airport by

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deceiving immigration officials present there.

4. The petitioner was granted default bail under Section 167(2) of the Code of Criminal Procedure, 1973 (for short, the Cr.P.C) by the jurisdictional Magistrate as per Ext.P2 order imposing certain conditions. He is aggrieved by condition Nos. 4 and 5 in Ext.P2 order, which reads as follows:

“4. The petitioner shall remain in Transit Home, Kottiyam, Kollam District till the disposal of the case against him and he shall be under the strict supervision of the Civil Authority within the meaning of the Foreigners Order, 1948.

5. Home Manager, Transit Home, Kottayam, Kollam District shall not release the accused without the orders of this Court”.

The main prayer in the writ petition is to delete condition Nos. 4 and 5 in Ext.P2. The respondents filed separate counter-statements opposing the prayer.

5. I have heard Smt.Niharika Hema Raj, the learned counsel for the petitioner, Smt.O.M.Shalima, the learned DSGI and Sri.Sangeetha Raj N.R., the learned Public Prosecutor.

6. The learned counsel for the petitioner submitted that the condition Nos. 4 and 5 constitute a form of continued and

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indefinite detention, defeating the very purpose of default bail, besides violating the fundamental rights guaranteed to the petitioner under Article 21 of the Constitution of India. The learned counsel further submitted that the Foreigners Order, 1948 (for short, the Order), only enables Civil Authorities to place the foreigner involved in a crime in India at the detention centre, and such a power cannot be extended to the Magistrate/Court while granting bail.

7. The learned DSGI representing respondent No. 2 submitted that the petitioner entered India illegally from Bangladesh, obtained an Indian Passport fraudulently, and that relaxing the impugned conditions could lead to his obtaining fake Indian documents under a different identity. The learned DSGI further argued that Article 19 of the Constitution does not grant the right to move freely within India to foreigners; therefore, the learned Magistrate was justified in imposing the conditions. The learned Senior Public Prosecutor representing

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respondent No. 1 added that if the conditions are released, there is a significant risk of the petitioner evading court procedures and colluding with accused No. 2 to commit similar offences.

8. Section 437 of Cr.P.C. deals with the power of a Court other than a Court of Sessions or a High Court to grant bail in non-bailable offences, and Section 439 Cr.P.C. deals with the power of a Court of Sessions or a High Court to grant bail in non-bailable offences. Sub-section (3) of Section 437 says that when a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail, the Court shall impose the following conditions:

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

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(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person 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 or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.

Section 439 of Cr.P.C. provides that a High Court or Court of Session may direct that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section. The proviso to sub-section (2) of Section 167 fixes the outer limit within which the investigation must be completed, and if the same is not completed within the period prescribed therein, the accused has a right to be

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released on bail if he is prepared to and does furnish bail. As per clause (a)(ii) of sub-section (2) of Section 167, a person released on bail (default bail) is deemed to be released under the provisions of Chapter XXXIII of the Cr.P.C., which includes Sections 437 and 439 also whereunder the Court is empowered to impose conditions. Thus, the Court can impose such conditions mentioned in Section 437(3) of Cr.P.C. while releasing a person on bail under Section 167(2).

9. The object of bail is neither punitive nor preventative. The object of imposing conditions of bail is to ensure that the accused does not interfere or obstruct the investigation in any manner, remains available for the investigation, does not tamper with or destroy evidence, does not commit any offence, remains regularly present before the trial court, and does not create obstacles in the expeditious conclusion of the trial. The bail conditions must be consistent with the object of imposing conditions and must not be onerous as to frustrate the order of

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bail itself. The scope of the concept of “interest of justice” in Section 437(3) of the Cr.P.C. has been considered by the Supreme Court in ***Kunal Kumar Tiwari v. State of Bihar*** [(2018) 16 SCC 74]. It was held that though palpably such wordings are capable of accepting a broader meaning, such conditions cannot be arbitrary, fanciful or extend beyond the ends of the provision. It was further held that the phrase “interest of justice” as used under clause (c) of Section 437(3) means “good administration of justice” or “advancing the trial process” and inclusion of a broader meaning should be shunned because of purposive interpretation. In ***Munish Bhasin v. State (NCT Delhi) and another*** [(2009) 4 SCC 45], it was held that while exercising discretion to release an accused under Section 438 of Cr.P.C., neither the High Court nor the Sessions Court would be justified in imposing freakish conditions. While considering the legality of the condition imposed while granting bail to a foreign national who is charged with offences under the NDPS

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Act, the Supreme Court in ***Frank Vitus v. Narcotics Control Bureau*** [2024 KLT OnLine 1777 (SC)] held that a broader meaning cannot be assigned to the words “interest of justice” in Section 437(3) of Cr.P.C. and that the bail conditions cannot be fanciful, arbitrary, or freakish. In ***Parvez Noordin Lokhandwalla v. State of Maharashtra & Another*** [(2020) 10 SCC 77], the Supreme Court took the view that conditions that may tend to deprive the accused of his rights ought not to be imposed by courts. In ***Sunil Mathew v. Station House Officer*** (2024 KLT OnLine 2398), a Single Bench of this Court held that the directions which are in the nature of blanket orders restricting the right of a person to express an opinion cannot be issued under the guise of imposing conditions while granting bail.

10. The right to be enlarged on statutory bail under Section 167(2) of Cr.P.C. is a fundamental right and not merely a statutory right. The said right flows from Article 21 of the Constitution of India and is an indefeasible part of the right to

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personal liberty. The court cannot frustrate or defeat this right of the accused through unreasonable conditions. Though while granting bail, the Court can impose conditions in the interest of justice, restricting the exercise of fundamental rights of an accused under the cover of such a condition is not legally sustainable.

11. In Ext.P2 order, the learned Magistrate imposed conditions 4 and 5 relying on Rule 11 of the Foreigners Order, 1948 and a decision of a Single Bench of this Court in ***Joshuva and Others v. State of Kerala*** [2015(1) KLT 52]. In that decision, while granting bail to a foreign national, the learned Single Judge imposed a similar condition restricting the movement of the accused relying on Section 11 of the Foreigners Order, 1948.

12. Under Section 3 of the Foreigners Act, 1946, the Central Government is empowered to issue an order making provisions either generally or concerning any particular foreigner or class of foreigners,

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prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence. Under clause (g) of Section 3(2), a power has been conferred on the Central Government to issue an order directing that a foreigner shall be arrested, detained or confined. In the exercise of the power conferred under Section 3 of the Foreigners Act, 1946, the Foreigners Order, 1948, has been issued. Clause 2(2) of the Order provides for appointing a Civil Authority by the Central Government. Clause 5 of the Order deals with the power to grant permission to depart from India.

13. As per Clause 5(1)(b) of the Order, no foreigner shall leave India without the leave of the Civil Authority having jurisdiction. As per Clause 5(2)(b) of the Order, when a foreigner's presence is required in India to answer a criminal charge, permission to leave India must be refused. Therefore, once a foreigner is released on bail, he cannot leave India without the permission of the Civil Authority, as provided in Clause 5 of the Order. Under Clause 11 of the Order, the Civil Authority can impose restrictions on the movements of a

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foreigner. The said power is wholly independent of the power to grant bail. Notwithstanding the bail granted by a criminal court, the power to arrest and detain a foreigner can be exercised, provided the Central Government makes an order in terms of Clause (g) of Section 3(2) of the Act. The power vested with the Civil Authority under the Foreigners Order, 1948, to impose restrictions on the movement of a foreigner cannot be imported to sub-clause (3) of Section 437 of Cr.PC, nor be incorporated as a condition while granting bail to a foreign national. The conditions incorporated in the order granting bail must be within the four corners of Section 437(3). While granting bail, the Courts can curtail the freedom of the accused only to the extent required for imposing the bail conditions warranted by law. Directions to remain in the detention centre/transit home while granting bail to a foreign national would amount to keeping the accused in some kind of confinement even after he is released on bail, defeating the very purpose of bail itself.

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Such a condition is violative of the fundamental right guaranteed under Article 21 of the Constitution, which is available not only to Indian citizens but to foreign nationals as well. A foreign national facing trial in India is entitled to right to life and dignity under Article 21.

14. The upshot of the above discussions and findings is that the Magistrate/Sessions Court, while granting bail to a foreign national, cannot impose a condition to detain him in a detention home/transit home till the conclusion of the trial. The Magistrate/Court does not have such a power either under Cr.P.C or Bharatiya Nagarik Suraksha Sanhita, 2023. The phrase "interest of justice" under clause (c) of Section 437(3) of Cr.P.C. cannot be stretched to include such a power. Confinement in a transit home without statutory backing amounts to judicial overreach. The direction to the petitioner in Ext.P2 order to remain in transit home converts the bail order into a detention order under the Foreigners Order, 1948. Therefore, the

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condition Nos. 4 and 5 in Ext.P2 are not legally sustainable and liable to be quashed. Recently, the Supreme Court in ***Frank Vitus v. Narcotics Control Bureau and Others*** (AIR 2025 SC 546) held that while releasing a foreigner on bail, the Court should direct the investigating agency or the State, as the case may be, to immediately inform the concerned Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992 about the grant of bail so that the Registration Officer can bring the fact of the grant of bail to the notice of concerned Civil Authority. It was further held that if such information was furnished, it would enable the authorities under the Act, the Rules and the Order to take appropriate steps in accordance with law.

15. For the aforementioned reasons, the condition Nos. 4 and 5 in Ext.P2 is hereby deleted. Since the respondent No.2 is already in the party array, it is not necessary to again communicate the order of granting bail to it as directed in the

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order of the Supreme Court in ***Frank Vitus*** (supra). The respondent No.2 shall pass appropriate orders in accordance with law after hearing the petitioner or his counsel within a period of one month. The prayer numbers (ii) to (iv) in the writ petition are left open.

The writ petition is disposed of as above.

Sd/-

**DR. KAUSER EDAPPAGATH
JUDGE**

APA

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APPENDIX OF WP(CRL.) NO. 795 OF 2025

PETITIONER EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE FIR DATED 12.08.2023 IN CRIME NO. 0871 OF 2023 OF VALIYATHURA POLICE STATION, THIRUVANANTHAPURAM
- EXHIBIT P2 A TRUE COPY OF THE ORDER DATED 05.12.2023 IN CRL.M.P NO. 4932/2023 OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT-XI, THIRUVANANTHAPURAM
- EXHIBIT P3 A TRUE COPY OF THE CRL MP NO. 193/2024 DATED 13.02.2024 TOGETHER WITH THE AFFIDAVIT
- EXHIBIT P4 A TRUE COPY OF THE MUTUAL LEGAL ASSISTANCE TREATY BETWEEN INDIA AND BANGLADESH DATED 13.01.2011
- EXHIBIT P5 A TRUE COPY OF THE EXTRADITION TREATY DATED NIL BETWEEN INDIA AND BANGLADESH
- EXHIBIT P6 A TRUE COPY OF THE IMMIGRATION AND FOREIGNERS (EXEMPTION) ORDER, 2025 DATED 02.09.2025
- EXHIBIT P7 A TRUE COPY OF THE PASSPORT BEARING NO. EB0929498 ISSUED ON 19.09.2019 BY THE PEOPLE'S REPUBLIC OF BANGLADESH TO THE PETITIONER
- EXHIBIT P8 A TRUE COPY OF THE NATIONAL ID CARD ISSUED ON 11.09.2020 TO THE PETITIONER BY THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH
- EXHIBIT P9 A TRUE COPY OF THE FAMILY CERTIFICATE DATED 20.05.2025 ISSUED BY THE 13 NO BAZALIA UNION PARISAD TO THE FATHER OF THE PETITIONER