



2025:KER:4592

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 21ST DAY OF JANUARY 2025 / 1ST MAGHA, 1946

BAIL APPL. NO. 11269 OF 2024

CRIME NO.449/2024 OF Vellayil Police Station, Kozhikode

PETITIONER/ACCUSED:

MANIKANDAN N.P,
AGED 25 YEARS
S/O, PRAKASAN N.P, RESIDING AT VANDEMATHRAM, BHUT
ROAD, KOZHIKODE TALUK, KOZHIKODE DISTRICT, PIN - 673005

BY ADVS.
M.B.SHYNI
RAJESH KUMAR R.
V.R.ANILKUMAR
SARAFUDHEEN T.
ELDHOSE JOY
AJITH P.C.
VISHNUJA BIJU

RESPONDENT/COMPLAINANT:

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

SRI.NOUSHAD.K.A, SR PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
21.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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P.V.KUNHIKRISHNAN, J

B.A.No.11269 of 2024

Dated this the 21st day of January, 2025

O R D E R

This Bail Application is filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita (BNSS).

2. Principles of Judicial Discipline while passing orders applies not only to Constitutional Courts, but to the Sessions courts and Magistrate courts also. If a bail application of one of the accused is allowed and if any bail application is filed by the co-accused in the same crime, unless there are sufficient reasons, the bail application of the co-accused shall not be dismissed. Of course, if the allegation against the accused released on bail is less serious compared to the involvement of the other accused, a distinction can be made. But, the

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Court concerned should give reason while rejecting bail of the co-accused in the same crime, if one of the accused is released on bail. The principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution of India.

3. Petitioner herein is the 8th accused in Crime No.449/2024 of Vellayil Police Station. The above case is registered against the petitioner and others, alleging offences punishable under Sections 126(2), 115(2), 118(1), 118(2), 324(4) read with Section 3(5) of Bharatiya Nyaya Sanhita, 2023 (for short BNS).

4. The prosecution case is that, on 18.10.2024, between 10:00 pm and 10:30 pm., at Puthiyangadi Bhat Road, at Kozhikode, around 15 identifiable persons in prosecution of their common intention, wrongfully restrained the informant and his relative Vishnu. It is alleged that the assailants assaulted them with their hands and hit them with

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the key of the scooter and thereby the informant sustained grievous injuries. It is further alleged that the accused damaged the car of the informant as well and took away the Vivo phone of the informant. Thus, it is alleged that the accused committed the offence.

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

6. The counsel for the petitioner submitted that the accused Nos.1 to 3 in the above crime are already released on bail under Section 482 OF BNSS by the Additional Sessions Court-III, Kozhikode, as per the Annexure 2 order. It is also submitted that, as per the Annexure 3 order, another accused was also released on bail under Section 482 of BNSS. It is submitted that the petitioner is the 8th accused. His bail application is dismissed as per the Annexure 4 order by the Principal Sessions Judge, without assigning any reason.

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7. The Public Prosecutor opposed the bail application. The Public Prosecutor submitted that serious allegations are there against the petitioner also. But, the Public Prosecutor conceded that the other accused were already released on bail as per Annexures 2 and 3 orders. It is also submitted by the prosecutor that, compared to the allegations against the accused, who were granted bail as per Annexures 2 and 3 orders, the allegations against the petitioner, who is the 8th accused are less.

8. This Court considered the contention of the petitioner and the Public Prosecutor. While considering the bail applications by the Sessions Court and the Magistrate Court, specific instructions should be obtained from the Public Prosecutor concerned to find out whether the co-accused bail application was considered, and whether their bail application was rejected or dismissed. If the bail application of a co-accused is rejected, the bail application of another co-accused

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can be allowed, only if the allegation against that co-accused whose bail application is rejected, is more serious, compared to the allegation against the co-accused, whose bail application is allowed. Similarly, if a bail application of an accused in a crime is allowed and the bail application of another co-accused comes up for consideration before the Sessions Court or the Magistrate Court and if the court wants to reject the bail application, sufficient reason should be mentioned to the effect that the allegation against the co-accused whose bail is granted, is less, compared to the allegation against the co-accused, whose bail application is going to be rejected. This type of clarity is necessary while considering the bail applications by the trial Courts. The same is necessary to maintain judicial discipline also.

9. In this case, admittedly, accused Nos. 1 to 4 were released on bail by the Additional District and Sessions Judge-III, Kozhikode as evident from Annexures 2 and 3. But, the bail

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applications of accused Nos.7 and 8 were dismissed by the Principal Sessions Judge as per the Annexure 4 order. It is true that the Principal Sessions Judge adverted the order passed by the Additional District and Sessions Judge-III, as evidenced by Annexures 2 and 3. But, without giving any sufficient reason for taking a different stand as far as accused No. 7 and 8, when the main accused were released on bail, the Principal Sessions Judge dismissed the bail application of accused Nos.7 and 8. This practice is to be stopped. In some other cases also, I have seen such orders passed by the Principal Sessions Judge, Kozhikode. Registry will forward a copy of this order to the Principal Sessions Judge, Kozhikode.

10. Coming back to the facts of this case, as observed earlier, accused Nos.1 to 4 were already released on bail under Section 482 BNSS by the Sessions Court. This Court granted bail to the 7th accused as per the order dated 15.01.2025 in B.A No.11266/2024. The petitioner in this bail

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application is the 8th accused. Considering the overt act and allegation against the petitioner, who is the 8th accused, the same is less, compared to the allegation against the other accused. Therefore, I am of the considered opinion that the petitioner in this bail application can be released on bail, invoking the powers under Section 482 of BNSS.

11. 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.

12. Recently the Apex Court in **Siddharth v State of Uttar Pradesh and Another [2021(5)KHC 353]**

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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.”

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

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 two 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 sum to the satisfaction of the arresting officer concerned.

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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 commission of which he is suspected.

6. Needless to mention, it would be well within the powers of the investigating

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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 and the victim are at liberty to approach the jurisdictional Court to cancel the bail, if any of the above conditions are violated.



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7. For the reasons stated in paragraph 9 of this order, the registry will forward a copy of this order to the Principal Sessions Judge, Kozhikode.

Sd/-

P.V.KUNHIKRISHNAN, JUDGE