



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 20<sup>TH</sup> DAY OF MAY 2024 / 30TH VAISAKHA, 1946

BAIL APPL. NO. 3379 OF 2024

CRIME NO.976/2023 OF MEENANGADI POLICE STATION, WAYANAD

PETITIONER:

ALI AJITH BHAI KALVATHAR,  
AGED 44 YEARS  
S/O AJITH BHAI, VIJAY CHOUK,  
GANJIWAD, BAGASARA, GUJARAT STATE,  
PIN - 365440

BY ADVS. S.JUSTUS  
SOJAN M.J.

RESPONDENT:

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

OTHER PRESENT:

SR PP SRI C S HRITHWIK

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
20.05.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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*Dated this the 20<sup>th</sup> day of May, 2024*

## **ORDER**

The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the fourth accused in Crime No.976/2023 of the Meenangadi Police Station, Wayanad, registered against the accused (four in number) for allegedly committing the offences punishable under Sections 384 & 306 of the Indian Penal Code, 1860 and Section 67A of the Information Technology Act, 2000. The petitioner was arrested on 16.02.2024.

2. The gist of the prosecution case is that: the accused, in furtherance of their common intention, on 15.09.2023 between 9.00 am and 12.30 p.m., caused the suicide of one Ajayraj, the brother of the de-facto complainant. The investigation has revealed that the accused had created an online application, which was downloaded by the deceased. Using the said



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application, the accused hacked the entire contents (data) from the phone of the deceased. They, thereafter, morphed the hacked photographs of the deceased and sent his naked pictures to his wife and other friends. It is due to the said act of the accused, the deceased committed suicide. The specific overt act alleged against the petitioner is that accused Nos.1, 2 & 3 had connected the phone to the Wifi Modem installed in the shop of the fourth accused and used the internet connection for downloading the data from the phone of the deceased. Thus, the accused have committed the above offences.

3. Heard; Sri. S. Justus, the learned counsel appearing for the petitioner and Sri. C. S. Hrithwik, the learned Senior Public Prosecutor.

4. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. He has been falsely



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implicated in the crime. In any given case, the petitioner has been in judicial custody since 16.02.2024, which is 94 days. The investigation in the case is complete, and recovery has been effected. A reading of the First Information Report as well as the remand report would substantiate that the only overt act levelled against the petitioner is that the other accused used the internet connection of the petitioner's shop room to download the pictures of the deceased from his mobile phone. Other than that, there is no overt act alleged against the petitioner. The petitioner does not have any criminal antecedents. Hence, the petitioner may be released on bail.

5. The learned Public Prosecutor opposed the application. He submitted that the investigation is in progress. He also submitted that the petitioner is a person hailing from the State of Gujarat. If the petitioner is let off on bail, there is every likelihood of



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him fleeing from justice, since he has no roots in Kerala. The petitioner has committed a very heinous offence of downloading the data from the phone of the deceased and thereafter, morphing his pictures and blackmailing him, which had led him to commit suicide. If the petitioner is let off on bail, there is every likelihood of him intimidating the witnesses and tampering with the evidence.

6. On a perusal of the prosecution allegation, it can be gathered that *prima-facie* the overt act alleged against the petitioner is that the accused Nos.1 to 3 had used the petitioner's internet connection to download the data from the phone of the deceased. However, the fact remains that the petitioner has been in judicial custody for the last 94 days, the investigation in the case is practically complete, and recovery has been effected.

7. In ***Sanjay Chandra v. CBI*** [2012 1 SCC 40],



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the Honourable Supreme Court has categorically held that the fundamental postulate of criminal jurisprudence is the presumption of innocence, until a person is found guilty. Any imprisonment prior to conviction is to be considered as punitive and it would be improper on the part of the Court to refuse bail solely on the ground of former conduct.

8. In ***Dataram Singh v. State of U.P.*** [(2018) 3 SCC 22] the Honourable Supreme Court observed that grant of bail is the rule and putting a person in jail is an exception. Even though the grant of bail is entirely the discretion of the court, it has to be evaluated based on the facts and circumstances of each case and the discretion has to be exercised in a judicious and compassionate manner.

9. In ***State of Kerala v. Raneef*** [(2011) 1 SCC 784], the Honourable Supreme Court has declared that undertrial prisoners detained in jail for indefinite



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periods, without any sufficient reason or due to the delay in concluding the trial, will tantamount to infringement of their right to life guaranteed under Article 21 of the Constitution.

10. The principle that bail is the rule and jail is an exception is the touch stone of Article 21 of the Constitution of India. Once the charge sheet is filed, a strong case has to be made out for continuing a person in judicial custody. The right to bail cannot be denied merely due to the sentiments of the society.

11. After bestowing my anxious consideration to the facts, the rival submissions made across the Bar, and the materials placed on record, especially considering the fact that the petitioner has been in judicial custody for the last 94 days, the investigation in the case is complete and recovery has been effected, I am of the definite view that the petitioner's further detention is unnecessary. Hence, I am inclined to allow



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the bail application; but subject to stringent conditions, especially taking note of the law laid down by the Hon'ble Supreme Court in ***Hussainara Khatoon (I) v. Home Secy., State of Bihar*** [(1980) 1 SCC 81].

In the result, the application is allowed, by directing the petitioner to be released on bail on him 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 court having jurisdiction, which shall be subject to the following conditions:

- (i) The petitioner shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is laid. He shall also appear before the Investigating Officer on every alternate Saturday between 9 a.m. and 11 a.m till the conclusion of the trial in Crime No.976/2023.
- (ii) The petitioner shall not directly or indirectly make any inducement, threat or procure to any





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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 in any manner, whatsoever;

- (iii) The petitioner shall not commit any offence while he is on bail;
- (iv) The petitioner shall surrender his passport, if any, before the court below at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the court below on the date of execution of the bond;
- (v) The petitioner shall also furnish his present address and permanent address, and his mobile phone number to the court below and the Investigating Officer;
- (vi) The petitioner shall not leave the territorial jurisdiction of the Court of the Session, Wayanad, without the previous permission of the jurisdictional court.



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- (vii) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.
- (viii) Applications for deletion/modification of the bail conditions shall be moved and entertained by the court below.
- (ix) 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].

Sd/-**C.S.DIAS,JUDGE**

DST/20.05.24

//True copy//

P.A. To Judge