2024:KER:73097

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 1ST DAY OF OCTOBER 2024 / 9TH ASWINA, 1946

JPP NO.4 OF 2024

PETITIONER:

SUO MOTU PROCEEDINGS INITIATED BY THE HIGH COURT

RESPONDENTS:

1 **STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001**

2 **UNION OF INDIA, REPRESENTED BY THE HOME SECRETARY
MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI, PIN - 110001**

3 **JASEELA T V
AGED 31 YEARS
W/O NOUSHAD, THAZHEVEETTIL HOUSE, VATTAPOYIL, EACHOOR P O, KANNUR CITY, KANNUR, PIN - 670591**

4 **NASEEB
AGED 30 YEARS
S/O ABDUL RAZAK, AL NOOR (HOUSE), VANIYMCHAL, EACHOOR P O, KANNUR CITY, KANNUR, PIN - 670591**

5 **ASHRAF
S/O ABDUL KHADER, RAYYAN VILLA, THOTTATHIL GARDENS, PANGALUKADDA, PULIPPARA P.O, KADAKKAL, KOLLAM, PIN- 691 536 IS SUO MOTU IMPLEADED AS PER ORDER DATED 25/09/2024 IN JPP 4/2024(S).**

BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
P.T.ABHILASH
DIRECTOR GENERAL OF PROSECUTION(AG-10)
SHRI.P.NARAYANAN, SPL. G.P. TO DGP AND ADDL. P.P.
SHRI.SAJJU.S., SENIOR G.P.

OTHER PRESENT:

SRI. T. C. KRISHNA, DSGI IN CHARGE,
SRI. P. NARAYANAN, SPL GP.

THIS JUDICIAL PRACTICE AND PROCEDURE HAVING COME UP FOR ADMISSION ON 01.10.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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ORDER

Anil K. Narendran, J.

This JPP is registered pursuant to the order dated 05.09.2024 of the learned Single Judge in B.A.No.5674 of 2024, which is one filed by respondents 3 and 4 herein, who are accused Nos.1 and 2 in Crime No.493 of 2024 of Kannur Town Police Station, invoking the provisions under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity, 'BNSS'), for an order of pre-arrest bail. The said crime is registered against them and two others, alleging the commission of an offence under Section 420 of the Indian Penal Code, 1860.

2. In the order dated 05.09.2024, after referring to the decision of a Division Bench of this Court in **Anu Mathew v. State of Kerala [2023 (3) KHC 151]** and that of the Apex Court in **Kusha Duruka v. State of Odisha [(2024) 4 SCC 432]**, the learned Single Judge directed the Registry to place B.A.No.5674 of 2024 before the Hon'ble the Acting Chief Justice to consider whether the matter is to be placed before the Division Bench dealing with the matters relating to Practice and Procedure in the

Judicial and Administrative Sections of the High Court, to lay down the practice and procedure to be incorporated in the bail application module, since the Court is coming across numerous applications for pre-arrest bail, where the fact that the accused are abroad is deliberately suppressed. By the order dated 23.09.2024 of the Hon'ble Acting Chief Justice the Registry was directed to place the matter before the Division Bench dealing with the matters relating to Practice and Procedure in the Judicial and Administrative Sections of the High Court. The Division Bench, by the order dated 23.09.2024, directed the Registry to register a JPP and list it before the Bench.

3. Heard the learned Special Government Pleader and Additional Public Prosecutor for the 1st respondent State, the learned Deputy Solicitor General of India-in-charge for the 2nd respondent Union of India, the learned counsel for respondents 3 and 4 and the learned counsel for the additional 5th respondent.

4. In the order dated 05.09.2024 in B.A.No.5674 of 2024, the learned Single Judge noticed that accused Nos.3 and 4 in Crime No.493 of 2024 of Kannur Town Police Station, who are arrayed as the accused in Crime No.9/2024 of the CBCID, Kannur

had moved this Court in B.A.No.4392 of 2024 for pre-arrest bail in Crime No.9/2024. In the said application, which was dismissed by the order dated 11.07.2024 [Annexure-R2(A) order produced in B.A.No.5674 of 2024], accused Nos.3 and 4 had suppressed the fact that they were abroad and are still at large. Accused Nos.3 and 4 had filed B.A.No.4392 of 2024 without adhering to the guidelines laid down by the Division Bench in **Anu Mathew [2023 (3) KHC 151]** for filing an application for pre-arrest bail by the accused who are abroad. In B.A.No.5674 of 2024, the 2nd applicant-accused No.2 is abroad. Although he has stated (in paragraph 4 of the statement of facts) that he will come down to India during the third week of July, 2024, he has not returned.

5. In the order dated 05.09.2024 in B.A.No.5674 of 2024, the learned Single Judge noticed the filing of numerous bail applications for pre-arrest bail, where the fact that the accused is abroad is deliberately suppressed. The Investigating Officers may also not be in a position to ascertain as to whether the accused is in India or abroad. If the application is dismissed, the accused refuses to come down to India. Many times, it is only when the

second application is filed that it is revealed that the accused is abroad.

6. In **Anu Mathew [2023 (3) KHC 151]** a Division Bench of this Court held that an anticipatory bail court has jurisdiction to entertain and consider a pre-arrest bail plea filed under sub-section (1) of Section 438 of the Criminal Procedure Code, 1973 (for brevity, 'Cr.P.C.'), even if the applicant accused is abroad at the time of filing of the application. Since the cardinal purpose of bail is the security for the appearance of the accused persons, on which he is released pending trial or investigation, etc., the Courts have an obligation, especially where the accused is abroad at the time of making the application and at the time when the plea is urged before the Court, to consider as to whether conditions as in clauses (i), (iii), etc. of sub-section (2) of Section 438 of Cr.P.C., i.e., the accused person shall make himself available for interrogation by a police officer, as and when required; the accused person shall not leave India without the previous permission of the Court; etc. are to be imposed.

7. In **Anu Mathew [2023 (3) KHC 151]**, the Division Bench held that if an accused had absconded from India and had

gone abroad knowing fully well about the registration of a crime in respect of a non-bailable offence, then thereafter, though he may technically have *locus standi* to maintain a pre-arrest bail plea, if as a matter of fact, the Court is convinced that he has absconded and fled away from the law enforcement agencies, etc., then it may not be right and proper exercise of jurisdiction to grant interim bail to such an accused, who is abroad. In this regard, the Court may examine whether the accused was already abroad at the time of registration of the crime. Even if the accused had gone abroad after registration of the crime, it may be ascertained whether he had bona fide gone abroad in view of his employment or professional compulsions, etc. General relevant facts should be ascertained by the Court before reaching factual conclusions as above.

8. Where the accused person is abroad at the time of making an application for pre-arrest bail under sub-section (1) of Section 438 of Cr.P.C., the said material fact that possesses the potential to significantly influence the decision-making process of the court and the imposition of conditions as in clauses (i), (iii), etc. of sub-section (2) of Section 438 of Cr.P.C., has to be disclosed

in such an application, failing which it would amount to suppression of materials facts from the notice of the court. The provisions contained in clauses (i), (iii), etc. of sub-section (2) of Section 482 of BNSS are *pari materia* with the provisions contained in clauses (i), (iii), etc. of sub-section (2) of Section 438 of Cr.P.C. Therefore, where the accused person is abroad at the time of making an application for pre-arrest bail under sub-section (1) of Section 482 of BNSS, the said material fact that possesses the potential to significantly influence the decision-making process of the court and the imposition of conditions as in clauses (i), (iii), etc. of sub-section (2) of Section 482 of BNSS, has to be disclosed in such an application, failing which it would amount to suppression of materials facts from the notice of the court.

9. In **Kusha Duruka [(2024) 4 SCC 432]** the Apex Court directed that the details and copies of order(s) passed in the earlier bail application(s) filed by the petitioner, which has already been decided; the details of any bail application(s) filed by the petitioner, which is pending either in any court, below the court in question or the higher court, and if none is pending, a clear

statement to that effect; etc. have to be mandatorily mentioned in bail applications filed in courts.

10. In **Kusha Duruka [(2024) 4 SCC 432]**, the Apex Court reiterated the law laid down in **Saumya Chaurasia v. Enforcement Directorate [(2024) 6 SCC 401]** that every party approaching the court seeking justice is expected to make full and correct disclosure of material facts and that, every advocate being an officer of the court, though appearing for a particular party, is expected to assist the court fairly in carrying out its function to administer the justice. Though it is true that the advocates would settle the pleadings and argue in the courts on instructions given by their clients; however, their duty to diligently verify the facts from the record of the case, using the legal acumen for which they are engaged, cannot be obliviated.

11. Therefore, where the accused person is abroad at the time of making an application for pre-arrest bail under sub-section (1) of Section 482 of BNSS, the said material fact that possesses the potential to significantly influence the decision-making process of the court and the imposition of conditions as in clauses (i), (iii), etc. of sub-section (2) of Section 482 of BNSS, has to be disclosed

in such an application, failing which it would amount to suppression of materials facts from the notice of the court

12. As already held hereinbefore, where the accused person is abroad at the time of making an application for pre-arrest bail under sub-section (1) of Section 482 of BNSS, the said material fact that possesses the potential to significantly influence the decision-making process of the court and the imposition of conditions as in clauses (i), (iii), etc. of sub-section (2) of Section 482 of BNSS, has to be disclosed in such an application, failing which it would amount to suppression of materials facts from the notice of the court. Therefore, the Registry is directed to have a compulsory field in the bail application module for all pre-arrest bail applications to ascertain whether the applicant accused is in India or abroad at the time of making the application.

In the result, this JPP is disposed of with the aforesaid direction. Registry to place B.A.No.5674 of 2024 before the Bench, as per the roster.

Sd/-
ANIL K. NARENDRAN, JUDGE

Sd/-
P.G. AJITHKUMAR, JUDGE

MIN

APPENDIX OF JPP 4/2024

PETITIONER ANNEXURES

Annexure 1	**ORDER DATED 05.09.2024 IN BAIL APPL 5674/2024**
Annexure 2	**OFFICE NOTES AND ORDERS OF HONOURABLE THE ACTING CHIEF JUSTICE DATED 23.09.2024**
Annexure 3	**OFFICE NOTES AND ORDERS OF THE HONOURABLE JUDGES DEALING WITH PRACTICE AND PROCEDURE IN THE JUDICIAL AND ADMINISTRATIVE SECTIONS OF THE HIGH COURT DATED 23.09.2024**