

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 17TH DAY OF OCTOBER 2024 / 25TH ASWINA, 1946

BAIL APPL. NO. 7225 OF 2024

CRIME NO.1989/2021 OF PALAKKAD TOWN SOUTH POLICE STATION, PALAKKAD

PETITIONER/S:

MUHAMMED HAROON
AGED 32 YEARS
S/O.KAMALUDHEEN, PALLIMEDU, ATHIKKODE, KOZHINJAMPARA,
PALAKKAD DISTRICT, PIN - 678555

BY ADVS.
M.A.AHAMMAD SAHEER
E.A.HARIS
MUHAMMED YASIL

RESPONDENT/S:

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

BY SRI.GRASHIOUS KURIAKOSE, SR.ADVOCATE &
ADDITIONAL DIRECTOR GENERAL OF PROSECUTION

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
7.10.2024, THE COURT ON 17.10.2024 PASSED THE FOLLOWING:

ORDER

The petitioner is the accused No. 6 in S.C No 662/2022 on the files of Addl Sessions Court-I, Palakkad, which arises from Crime No.1989/2021 of the Palakkad Town South Police Station. The offences alleged are punishable under sections 143,144,147,148,341,302,120B, 201,212,109,118, 465, 471 read with 149 of the IPC & section 27(3) r/w 7(a) and (b) of the Arms Act.

2. The prosecution case is that, on 15.11.2021 at about 8.45 P.M, due to political animosity, one Sanjith, a worker of Rashtriya Swayam Sevak Sangh (RSS) was attacked by the accused Nos. 1 to 5 with swords and sticks, while he was travelling along with his wife. Due to the injuries inflicted upon the body of the said Sanjit, he died. The crime was initially registered against the five accused persons and during the course of investigation, the petitioner was implicated as the 6th accused, on the ground that the murder was committed on the basis of a conspiracy hatched between the accused including the petitioner. According to the prosecution, out of the seven conspiracies, the petitioner had participated in five conspiracies, and one of the same took place on the property of the petitioner. As part of the investigation, the petitioner was arrested on 23.01.2022 and since

then he has been under judicial detention. Even though the petitioner approached this court on two occasions, seeking bail, the said applications were rejected as per Annexure A2 and A3 orders. This application for bail is submitted in such circumstances.

3. Heard Sri. Raghenth Basant, the learned Senior Counsel for the petitioner, Sri Grashious Kuriakose, the learned Senior Counsel and the Additional Director General of Prosecutions, for the State.

4. The main contentions raised by the learned Senior Counsel for the petitioner are by pointing out the long incarceration of the petitioner, that extends to more than two years and nine months, and also that, in a connected case of equal gravity, registered by the police in respect of another murder took place, as a retaliation of the incident in this case, some of the accused were already granted bail, taking note of the period of detention and other relevant circumstances. The orders by which bail granted to the said accused were also produced along with this bail application. Besides, it was pointed out that, when the 2nd bail application, which culminated in Annexure A3 order was passed, none of the parties pointed that, before filing the bail application, the charges were framed which is a change in circumstances, so as to entertain the bail application. Since the same was not brought to the notice of this court, the said application was

rejected holding that there is no change in circumstances warranting grant of bail. Reliance was placed on the decision of the Honourable Supreme Court in **Sanjay Chandra vs Central Bureau of Investigation [(2012) 1 SCC 40]** to substantiate the contention regarding the change in circumstances, on account of the framing of charge. Apart from the above, the learned Senior Counsel for the petitioner relied on **Union of India v. K.A Najeeb [(2021) 3 SCC 713]**, **Javed Gulam Nabi Shaikh v State of Maharashtra [2024 SCC OnLiLine SC 1693]**, **Jalaludhin Khan v. Union of India [2024 SCC OnLine SC 1945]**, **Manish Sisodia v. Directorate of Enforcement [2024 SCC OnLine SC 1920]**, **Prem Prakash v. Union of India [2024 SCC OnLine SC 2270]** and **Aravind Kejriwal v. CBI [2024 SCC OnLine SC 2550]**.

5. The learned ADGP stoutly opposed the bail application, by mainly contending that, no reasons are in existence to take a different view than taken by this court in the earlier bail applications. It was reiterated that there are ample materials indicating that the petitioner was actively involved in the conspiracy for committing the murder, and he was an active member of the organization named Popular Front of India (PFI), which is a banned organisation. It was also contended that the said organisation was behind the murder in this case. It is also the

case of the prosecution that, the murder in this case was part of a series of attacks and counter attacks due to the rivalry between two organisations. As a retaliation for the murder in this case, another person named Zakkeer, who belonged to the organisation of the petitioner, was murdered. The learned ADGP relied on **State of U.P through CBI v. Amramani Thripathi [(2005) 8 SCC 21], Virupakshappa Gouda and Another v. State of Karnataka and Another [(2017) 5 SCC 406], Rajesh Rajan Yadav @ Pappu Yadav v CBI [(2007) 1 SCC 70], Gurwinder Singh v.State of Punjab [2024 SCC OnLine SC 109] and Tarun Kumar v. Assistant Director, Directorate of Enforcement [2023 SCC OnLine SC 1486]**. The dismissal of the application was sought in such circumstances.

6. I have carefully gone through the records. It is true that this court considered the application for bail on earlier occasions and rejected the same twice, as per Annexure A2 and A3 orders. The specific case of the petitioner is that, when the 2nd bail application was rejected vide Annexure A3, the fact that the charge was already framed against the petitioner, before the date of filing of the said application was not brought to the notice of this court by either side. It was pointed out that it was a relevant aspect indicating the change of circumstances, as held in **Sanjay Chandra's case (supra)**. It is

evident from Annexure A2 that, the said order was passed without taking note of the said aspect and in para 19 of **Sanjay Chandra's case (supra)** it was observed that it is a relevant event, to indicate change of circumstances.

7. However, I am of the view that, even if that contention is accepted, that by itself cannot be a ground to re-agitate the contentions raised by the petitioner with regard to the merits of the allegations against the petitioner, which are already decided by this court in the earlier bail applications. Thus, the question of re-consideration of the grounds in respect of the merits of the allegations against the petitioner, does not arise.

8. However, even while holding so, two contentions raised by the learned Senior Counsel for the petitioner, by placing reliance upon various decisions rendered by the Honourable Supreme Court, cannot be ignored. Firstly, the long incarceration of the petitioner without a trial and its impact upon the Constitutional rights of the petitioner under Article 21 of the Constitution of India. Secondly, the bail granted by this court to some of accused persons against whom allegations of similar gravity were raised, in connection with murder, which took place as retaliation of the murder in this case.

9. As far as the long period of incarceration of the petitioner is

concerned, it is true that, the decisions in **Gurwinder Singh's and Pappu Yadav's cases** (supra), relied on by the learned ADGP, it was observed that, long incarceration of the accused and the delay in trial by itself cannot be grounds to grant bail to the accused. However, certain observations repeatedly made by the Honourable Supreme Court in the recent decisions, that too in cases involving offences under special enactments such as, NDPS Act, UAPA etc., where additional conditions are imposed for granting bail, cannot be lost sight of.

10. In **Javed Gulam Nabi Shaikh's case** (supra), after referring to a series of decisions, including, **Union of India v K.A.Najeeb [(2021) 3 SCC 713]**, **Satendar Kumar Antil v CBI [(2022) 10 SCC 51]**, **Hussainara Khatoon v. Home Secretary, State of Bihar [(1980) 1 SCC 81]**, it was observed by the Honourable Supreme Court in para 19 and 20 as follows:

"19.If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20.We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence

that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

That was a case involving provisions of the Unlawful Activities (Prevention) Act, 1967 (UAPA) where special conditions are stipulated for granting bail.

11. **Manish Sisodia’s case** (supra), was registered under the provisions of the Prevention of Money Laundering Act, 2002(PMLA), where section 45 contemplated dual conditions for bail. In the said decision, the following observations were made by the Honourable Supreme Court at para. 53 as follows:

“53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that “bail is rule and jail is exception”.”

12. In **Prem Prakash’s case** (supra), after referring to section 45 of the PMLA, the following observations are made at para 11:

“

All that Section 45 of PMLA mentions is that certain conditions are to be satisfied. The principle that, “bail is the rule and jail is the exception” is only a paraphrasing of Article 21 of the Constitution of India, which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty of the individual is always a Rule and deprivation is the exception. Deprivation can only be by the procedure established by law, which has to be a valid and reasonable procedure. Section 45 of PMLA by imposing twin conditions does not re-write this principle to mean that deprivation is the norm and liberty is the exception. As set out earlier, all that is required is that in cases where bail is subject to the satisfaction of twin conditions, those conditions must be satisfied.”

13. In **Aravind Kejriwals’** case (supra), in paras 38, 39 and 40 of the concurring judgment, it was observed as follows:

“38. This Court in Gudikanti Narasimhulu v. Public Prosecutor, had highlighted that bail is not to be withheld as a punishment. The requirement as to bail is merely to secure the attendance of the prisoner at trial. This Court in Manish Sisodia referred to and relied upon the aforesaid decision and reiterated the salutary principle that bail is the rule and jail is the exception. This Court has observed that even in straightforward open and shut cases, bail is not being granted by the trial courts and by the High Courts. It has been held as under:

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a

punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".

39. Bail jurisprudence is a facet of a civilised criminal justice system. An accused is innocent until proven guilty by a competent court following the due process. Hence, there is presumption of innocence. Therefore, this Court has been reiterating again and again the salutary principle that bail is the rule and jail is the exception. As such, the courts at all levels must ensure that the process leading to and including the trial does not end up becoming the punishment itself.

40. This Court has emphasized and re-emphasized time and again that personal liberty is sacrosanct. It is of utmost importance that trial courts and the High Courts remain adequately alert to the need to protect personal liberty which is a cherished right under our Constitution."

14. In **Jalaluddin Khan's** case (supra) the accused was the member of PFI, the organisation which is involved in this case also, and the observations made by the Honourable Supreme Court in para 21, while granting bail were as follows:

"21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on

the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution."

15. In **K.A Najeer's case** (supra), it was observed at para 15 and 17 as follows:

"15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial

would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

16. Thus, it is evident from the above observations that, the long incarceration of the accused, without the trial could be a ground to release the accused on bail. It is to be noted that the above observations were made by the Honourable Supreme Court in the cases involving special enactments where additional conditions were imposed for granting bail. As far as the offences alleged against the petitioner are concerned, the same do not include any offences under such special enactments. Therefore, I do not find any reason to deny the benefits of the said observations to the petitioner. It is to be noted

in this regard that the petitioner has been in judicial custody for more than two years and nine months. It is not the case of the prosecution that the petitioner physically participated in the act of murder, but on the other hand, the allegations against him are confined to the criminal conspiracy, which is to be proved at the time of trial. Further, there is no allegation that petitioner committed any acts for aiding the accused 1 to 5 to commit the murder. It is also reported that, after submitting the final report in this case, two supplementary final reports were submitted in the crime, and proceedings based on one of such final reports is only in the committal stage. Moreover, even though the charges were framed against the petitioner as early as on 18.12.2023, so far, the trial has not been scheduled. Therefore, the chances of the trial taking place in the near future appear to be bleak.

17. While considering the entitlement of the petitioner to get bail, the fact that as per Annexure A5 and A6 orders, some of the accused in Crime No. 203 of Kasaba Police Station, Palakkad, involving offences under section 109, 118, 120B, 324, 326, 307, 302, 465, 471, 201 r/w 34 of the IPC and Section 27(3) r/w 7(a) of the Arms Act, were granted bail, is also a relevant aspect. It is to be noted that, the said Crime was registered against the members of the rival organization, and as per the prosecution, the said murder took place, as a

retaliation of the murder in this case. The accused persons who were granted bail in that crime were implicated for taking part in the conspiracy, and some of the said accused were having criminal antecedents as well. This court granted bail, taking note of the fact that they had been in judicial detention for more than one and a half years.

18. As far as the petitioner in this case is concerned, he has been in custody since 23.01.2022 and thus, more than two years and nine months have elapsed. Moreover, the petitioner was never involved in any other offences in the past. Even though there is an allegation that he was an active member of PFI, a banned organisation, it was contended by the petitioner that, as on the date of commission of the crime, it was not banned. The said contention is not denied by the prosecution. Therefore, the fact that he was a member of such an organisation, by itself, would not attract any culpability, warranting incarceration, and it is for the prosecution to establish the role of the petitioner, in the trial. The view taken by this court as above, is in tune with the observations of the Honourable Supreme Court in **Jalaluddin Khan's case (supra)**.

19. In such circumstances, taking note of the period of incarceration of the petitioner, possible delay in completing the trial

and the nature of allegations against the petitioner, I am inclined to grant bail.

Accordingly the petitioner is directed to be released on bail, on the following conditions:

i) The petitioner shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

ii) The petitioner shall appear before the trial court as and when required.

iii) The petitioner shall not commit any offence of similar nature while on bail.

iv) The petitioner shall not make any attempt to contact any of the prosecution witnesses, directly or through any other person, or any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.

v) The petitioner shall not leave India without the permission of the jurisdictional court.

vi) The petitioner shall surrender his passport before the Jurisdictional court and, in case, he does not have a passport, an affidavit to that effect shall be filed.

In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation of bail, if any, and pass appropriate orders in accordance with the law.

Sd/-

**ZIYAD RAHMAN A.A.
JUDGE**

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APPENDIX OF BAIL APPL. 7225/2024

PETITIONER'S ANNEXURES

- Annexure A1** TRUE COPY OF THE RELEVANT PAGES OF THE FINAL REPORT IN S.C.NO.662/2022 ON THE FILES OF THE ADDL-SESSIONS COURT-I, PALAKKAD
- Annexure A2** TRUE COPY OF THE ORDER DATED 21.08.2023 IN B.A. NO.10499 OF 2022 OF THIS HON'BLE COURT
- Annexure A3** TRUE COPY OF THE ORDER DATED 02.04.2024 IN B.A. NO.930 OF 2024 OF THIS HON'BLE COURT
- Annexure A4** TRUE COPY OF THE RELEVANT PAGES OF THE FINAL REPORT IN CRIME 203/2022 OF KASABA POLICE STATION
- Annexure A5** TRUE COPY OF THE ORDER DATED 17.01.2024 IN B.A.NO.2252/2023 AND CONNECTED CASES OF THIS HON'BLE COURT
- Annexure A6** TRUE COPY OF THE ORDER DATED 09.01.2024 IN B.A.NO.10247/2023 OF THIS HON'BLE COURT
- Annexure A7** TRUE COPY OF THE ORDER DATED 29.07.2024 IN SLP (CRIMINAL) DIARY NO. 30837/2024 OF HON'BLE SUPREME COURT
- Annexure 8** ORDER DATED 31-03-2023 IN BAIL APPL.1819/2023 OF HIGH COURT OF KERALA.