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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 31ST DAY OF JANUARY 2025 / 11TH MAGHA, 1946

BAIL APPL. NO. 859 OF 2025

CRIME NO.30/25 OF KALLADICODE POLICE STATION, Palakkad

PETITIONER(S)/ACCUSED:

**NOUSHAD M
AGED 47 YEARS, S/O. MOIDUTTY, MURUNGAKKODAN
HOUSE, THACHAMPARA, MANNARKKAD, PALAKKAD,
KERALA, PIN - 678 593**

BY ADV K.T.THOMAS

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 031**

**BY ADV.
SRI. NOUSHAD K.A., SR.PP**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 31.01.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



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P.V.KUNHIKRISHNAN, J.

BA No.859 of 2025

Dated this the 31st day of January, 2025

ORDER

This Bail Application is filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

2. The petitioner is an accused in Crime No.30/2025 of Kalladikkode Police Station, Palakkad. The above case is registered against the petitioner alleging offences punishable under Sections 3, 7(1)(a)(i) of the Essential Commodities Act, 1955 and Clause 4(1)(b) of the LPG (Regulation of Supply & Distribution) Order, 2000.

3. The prosecution case is that, on 09.01.2025 at around 04.30 PM, an investigation was conducted at the residence of the house of the



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petitioner under construction and it was found that around 83 gas cylinders of several companies along with a weighing machine and motor were illegally stored there and on inspection of the aforesaid house a goods autorikshaw was also seen. It is alleged that the articles found were seized and a mahazar is prepared and thereafter this case is registered.

4. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

5. The counsel for the petitioner submitted that, even if the entire allegations are accepted, no offence is made out against the petitioner. The counsel also submitted that the petitioner is ready to abide any conditions imposed by this Court, if this Court grants him bail.

6. The Public Prosecutor opposed the bail application and submitted that serious allegations



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are there against the petitioner. The Public Prosecutor also submitted that, as per the report received by him from the Investigating Officer, no criminal antecedents is alleged against the petitioner.

7. This Court considered the contentions of the petitioner and the Public Prosecutor. It is true that the allegations against the petitioner is serious. But, the maximum punishment that can be imposed for the offences alleged is below 7 years. The Apex Court in **Arnesh Kumar v. State of Bihar and Another** [2014 (8) SCC 273] observed that, even while considering an application for anticipatory bail, the court should take a lenient view if the punishment that can be imposed is only up to 7 years. It will be better to extract the relevant portion of the above judgment:

“7. xxxxxxxxx

7.1. From a plain reading of the



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aforesaid provision, it is evident that all person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case, or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer, or unless such accused person is arrested, his conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the



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reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes, envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC."

8. Keeping in mind the above dictum laid down by the Apex Court, this Court perused the



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prosecution case once again. I am of the considered opinion that the custodial interrogation of the petitioner is not necessary. Hence, I think, the bail application can be granted after imposing stringent conditions.

9. 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.

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



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353] 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



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the officer to arrest the accused.”

11. 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 offence, 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 conditions:

- 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*



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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.

3. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner shall co-operate 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.



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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 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*



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accordance to law, even though this 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.

nvj

**Sd/-
P.V.KUNHIKRISHNAN
JUDGE**