



2025:KER:10956

BAIL APPL. NO. 10859 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 11TH DAY OF FEBRUARY 2025 / 22ND MAGHA, 1946

BAIL APPL. NO. 10859 OF 2024

**CRIME NO.1972/2023 OF Poojappura Police Station,
Thiruvananthapuram**

PETITIONERS/ACCUSED NOS.1 & 2:

- 1 RAJESH V S,
AGED 41 YEARS
B . VIJAYAKUMAR . TC 19/2050(1),
VANIYATHU LANE, MUDAVANMUKAL, POOJAPPURA,
THIRUVANATHAPURAM, PIN - 695012**
- 2 VIJAYAKUMAR. S
AGED 62 YEARS
S/O N.SIVASANKARA PILLAI TC 19/2129(2),
SREEPADMAM, MUDRA124A, MUDAVANMUKAL,
POOJAPPURA P O, THIRUVANANTHAPURAM, PIN - 695012**

**BY ADVS. M.R.SARIN
P.SANTHOSHKUMAR (KARUMKULAM)
PARVATHI KRISHNA
ANASWARA K.P.
MAHALEKSHMY P.S
SOORAJ S
KARUNA SANKAR**

RESPONDENT/STATE/DEFACTO COMPLAINANT:

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



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**2 JOINT REGISTRAR (GENERAL),
), OFFICE OF THE SAHAKARANA SANGHAM, JAWAHAR
 SAHAKARANA BHAVAN, DPI JUNCTION, THYCAUD P.O.,
 THIRUVANANTHAPURAM, PIN - 695014**

OTHER PRESENT:

SRI.NOUSHAD K.A., SR.PP

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



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P.V.KUNHIKRISHNAN, J.

B.A.No.10859 of 2024

Dated this the 11th day of February, 2025

ORDER

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

2. Petitioners are the accused in Crime No.1972/2023 of Poojapura Police Station. The above case is registered against the petitioners alleging offences punishable under Sections 408 and 420 read with Section 34 of the Indian Penal Code.

3. The prosecution case is that, the 1st accused started the MDS scheme in the Mudavanmugal Residence Welfare Co-operative Society without obtaining any permission to start the MDS scheme in the Mudavanmugal Residence Welfare Cooperative Society and by violating provisions of the bye-laws of the Co-operative Society for starting MDS scheme with the help of the 2nd accused, who was working as a Secretary in Mudavanmugal Residence Welfare Cooperative



Society. Hence it is alleged that the accused committed the offence.

4. Heard counsel for the petitioners and the Public Prosecutor.

5. The counsel for the petitioners submitted that even if the entire allegations are accepted, the offences alleged are not attracted. The Co-operative Department initiated some proceedings under Section 65 of the Co-operative Societies Act. There is no complaint from any of the subscribers. The counsel submitted that the petitioners are ready to abide any conditions if this Court grant them bail. The Public Prosecutor opposed the bail application. When this bail application came up for consideration, this Court directed the Public Prosecutor to get instructions as to whether any subscribers filed any complaint. The Public Prosecutor, after getting instructions, submitted that no subscribers filed any complaint.

6. This Court considered the contentions of the petitioners and the Public Prosecutor. It is true that the allegation of the prosecution is that the MDS scheme is started by the Society without permission from the Department.



Admittedly there is no grievance from any subscribers. After going through the prosecution case, I am of the considered opinion that the prosecution can prove the case through oral and documentary evidence. No custodial interrogation of the petitioners is necessary.

7. 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.

8. Recently the Apex Court in **Siddharth v State of Uttar Pradesh and Another [2021(5)KHC 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 the officer to arrest the accused."

9. 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.

10. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The petitioners 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 petitioners, they shall be released on bail on executing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties each for the like sum to the satisfaction of the arresting officer concerned.
3. The petitioners shall appear before the



Investigating Officer for interrogation as and when required. The petitioners 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. Petitioners shall not leave India without permission of the jurisdictional Court.
5. Petitioners shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are 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 petitioners



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even while the petitioners are 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 petitioners, the jurisdictional Court can cancel the bail in accordance to 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.

JV

sd/-
P.V.KUNHIKRISHNAN
JUDGE