IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

BAIL APPL. NO. 5032 OF 2025

CRIME NO.390/2025 OF Kunnamkulam Police Station, Thrissur

PETITIONER/ACCUSED:

MOHAMMED HASHIM PY
AGED 23 YEARS
S/O YUSAF, PATTUPARABIL (H), PALAPPEETTY,
MALAPPURAM, PIN - 679579

BY ADVS.
D.FEROZE
T.S.KRISHNENDU
JANET VARGHESE
ADARSH A.

RESPONDENT/STATE:

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

OTHER PRESENT:

SRI HRITHWIK C .S, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A.No.5032 of 2025

Dated this the 11th day of April, 2025

ORDER

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

2. Petitioner is the 5th accused in Crime No.390/2025 of Kunnamkulam Police Station. The above case is registered against the petitioner and others alleging offences punishable under Sections 189(2), 191(2), 191(3), 126(2), 115(2), 118(1), 110 and 190 of the Bharatiya Nyaya Sanhita (for short, BNS).

3. The prosecution case is that on 23.01.2025 at about 19.20 hours, six identifiable persons formed an unlawful assembly nearby the residence of the defacto complainant to wreck vengeance against him and when the defacto complainant was going towards his residence the accused persons restrained the defacto complainant and compelled him

to go with the accused persons. As the defacto complainant resisted and refused to go with the accused persons, the 1st accused threatened the defacto complainant with a knife and insisted him to accompany him in his bike and when the defacto complainant refused this, the 1st accused attacked the defacto complainant with knife and caused injury in his head and the other accused persons assaulted the defacto complainant. Thereafter the 1st accused attempted to stab the defacto complainant and the defacto complainant escaped from the above attack. Hence it is alleged that the accused committed the offence.

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

5. The counsel for the petitioner submitted that the petitioner is only the 5th accused and the main overt act is attributed to the 1st accused. The counsel submitted that the petitioner is ready to abide any conditions if this Court grant him bail. The Public Prosecutor opposed the bail application and submitted that the petitioner is involved in one more case in which the allegation is that he committed the offence under

Section 324 IPC.

6. This Court considered the contentions of the petitioner and the Public Prosecutor. This Court perused the First Information Statement also. A perusal of the same would show that the main overt act is attributed to the 1st accused. The petitioner is the 5th accused. Considering the facts and circumstances of the case, I think this bail application can be allowed.

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, I think bail can be granted after imposing stringent conditions.

Therefore, this Bail Application is allowed with the following directions:

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 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.

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. The observations and findings in this order is only for the purpose of deciding this bail application. The principle laid down by this Court in ***Anzar Azeez v. State of Kerala*** [2025 SCC OnLine KER 1260] is applicable in this case also.

8. If any of the above conditions are violated by the petitioner, 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.

sd/-
P.V.KUNHIKRISHNAN
JUDGE

JV