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. 5555 OF 2025

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.287 OF 2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, HARIPAD

PETITIONER(S)/ACCUSED NO.2:

A.P. IBRAHIMKUTTY
AGED 53 YEARS
S/O ABOOBACKERKUNJU MALIYA HOUSE, KANIYAPURAM P.O, THIRUVANATHAPURAM, PIN - 695301

BY ADVS.
A.B.MOHANAKUMAR
ASHIS A.

RESPONDENT(S)/STATE AND DEFACTO COMPLAINANT:

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

2 **THE STATION HOUSE OFFICER(SHO) HARIPPAD POLICE STATION**
HARIPPAD ALAPPUZHA , KERALA,, PIN - 690514

3 **PRATHIBHA**
AGED 48 YEARS
DO/ BHARGAVANANATHARAYIL HOUSE CHANGANKULANGARA OACHIRA, VAVVAKAVU P.O KOLLAM DISTRICT, PIN - 690528

BY ADV.
SRI. G.SUDHEER 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.5555 of 2025

Dated this the 11th day of April, 2025

O R D E R

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

2. Petitioner is the accused in C.C. No.287/2021 on the file of the Judicial First Class Magistrate Court – II, Harippad. The above case is registered against the petitioner alleging offences punishable under Sections 415, 417 & 420 r/w 34 of the Indian Penal Code, 1860.

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

4. The petitioner apprehend arrest based on a warrant issued from the court. The counsel for the petitioner submitted that the petitioner is ready to surrender before the jurisdictional court. The main grievance of the petitioner is that, if the petitioner surrender before the jurisdictional court, the

jurisdictional court will remand him without considering his bail application.

5. I am of the considered opinion that, no such apprehension is necessary. This Court in **Biju S. Praveen v. State of Kerala and Another** [2007 KHC 3436] observed like this:

> "17. It must always be remembered that personal liberty is a very valuable right guaranteed to every citizen of this country under the Constitution. Remanding the accused to custody pending trial in a very casual manner cannot be justified at all. Anybody can get involved in a criminal case unwittingly in connection with road accident due to reasons or circumstances beyond his control. The position of such an accused will be more vulnerable if he gets involved in such a case away from his village or home town. It may be remembered that the petitioner and his family got involved in the road accident in Palakkad district while they were on their way to Maharashtra. It is also on record that the petitioner and his family had shifted their residence from Maharashtra to Thrissur later. It is further revealed that petitioner's Maharashtra address was shown in the police and court records. Evidently, the learned Magistrate had not bothered to comply with the direction issued by this court or even peruse the case records. Such a conduct on the part of a judicial officer is highly unbecoming of the position that he is occupying. He ought to have exercised care and circumspection while passing orders on the bail application, particularly since there was clear indication in the order of this court to follow the guidelines contained in the two decisions rendered in

similar cases. The very fact that the learned Magistrate has not referred to the order passed by this court clearly indicates the casual and disrespectful approach made by him while considering the bail application.

18. As mentioned earlier, criminal courts should always be careful while passing orders on bail applications which in effect deal with personal liberty. In cases where the court decides to sent an accused to custody pending trial, it must be ensured that the court applied its mind judicially and judiciously with particular reference to the facts and circumstances of the case. The mere fact that the accused had failed to respond to a summons or that the court had to issue non bailable warrant to compel his presence will not ipso facto empower the criminal court to remand the accused to custody as a punitive measure when he appears before the court on his own volition or is produced in execution of the warrant. The bail application that may be moved on his behalf has to be considered and orders should be passed on the same day itself since personal liberty of an accused cannot be curtained in a whimsical or disdainful manner."

6. In **Rajeevan v. State of Kerala (2008(4)KLT 98)**, this Court observed like this:

"17. Thus, on facts and on law, S.438 of the Code will not apply to the facts of this case and hence, anticipatory bail cannot be granted to

> petitioner. Still, I make it clear that it is open to the petitioner to surrender before the Magistrate Court and to file an application for bail, and satisfy learned Magistrate that he was not evading the process of the court, or that he did not intend to abscond. In such event, learned Magistrate shall dispose of the bail application, untrammalled by any of the observations made in this order, on merit. I also make it clear that the observations made in this order are all based only on the oral submissions made, without being any supporting materials.
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> 18. I would also add that the considerations for granting bail are different from the consideration for granting anticipatory bail and the refusal of anticipatory bail under S.438 of the Code may not by itself be a ground to refuse bail to an accused, under S.437 or 439 of the Code."

7. The court concerned will consider the dictum laid down by this Court in **Biju S. Praveen**'s case (supra) and **Rajeevan**'s case (supra) while deciding the bail application.

Therefore, this bail application is disposed of with the following conditions.

1) The petitioner shall surrender before the jurisdictional court within three weeks from

today.

2) The petitioner is free to file a bail application before the court concerned at the time of surrender with advance copy to the prosecutor concerned.

3) If such a bail application is filed by the petitioner, the jurisdictional court will consider the same and pass appropriate orders in it preferably on the date of filing of the same itself and also in the light of the dictum laid down in **Biju S. Praveen**'s case (supra) and **Rajeevan**'s case (supra).

Sd/-

P.V.KUNHIKRISHNAN, JUDGE

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