

Binilkumar vs State of Kerala

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Court : Kerala

Decided On : Feb-06-2025

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Bail Appl./1495/2025

Appellant : Binilkumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
THURSDAY, THE 6TH DAY OF FEBRUARY 2025 / 17TH MAGHA,
1946 BAIL APPL. NO. 1495 OF 2025 CRIME NO.2062/2023 OF
Perumbavoor Police Station, Ernakulam PETITIONER/S: BINILKUMAR
AGED 40 YEARS S/O GOPINATHAN, ATTAYATHU HOUSE,
KURUPPAMPADY KARA, RAYAMANGALAM VILLAGE, ERNAKULAM
DISTRICT, KERALA, PIN - 683545 BY ADV VISHAK.K.JOHNSON
RESPONDENT/S: STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 BY ADV.
HRITHWIK.C.S, SR PP THIS BAIL APPLICATION HAVING COME UP
FOR ADMISSION ON 06.02.2025, ALONG WITH Bail Appl..1479/2025,

1505/2025 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN THURSDAY, THE 6TH DAY OF FEBRUARY 2025 / 17TH MAGHA, 1946 BAIL APPL. NO. 1479 OF 2025 CRIME NO.24/2024 OF Perumbavoor Police Station, Ernakulam PETITIONER/S: BINILKUMAR AGED 40 YEARS S/O GOPINATHAN, ATTAYATHU HOUSE, KURUPPAMPADY KARA, RAYAMANGALAM VILLAGE, ERNAKULAM DISTRICT, KERALA, PIN - 683545 BY ADV VISHAK.K.JOHNSON RESPONDENT/S: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 BY ADV. NOUSHAD.K.A, SR PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06.02.2025, ALONG WITH Bail Appl..1495/2025 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN THURSDAY, THE 6TH DAY OF FEBRUARY 2025 / 17TH MAGHA, 1946 BAIL APPL. NO. 1505 OF 2025 CRIME NO.1920/2023 OF Perumbavoor Police Station, Ernakulam AGAINST THE ORDER/JUDGMENT DATED 27.01.2025 IN CMP

NO.367 OF 2025 OF JUDICIAL MAGISTRATE OF FIRST CLASS I ,PERUMBAAVOOR PETITIONER/S: BINILKUMAR AGED 40 YEARS S/O GOPINATHAN, ATTAYATHU HOUSE, KURUPPANPADY KARA, RAYAMANGALANI VILLAGE, ERNAKULAM DISTRICT, KERALA, PIN - 683545 BY ADVS. VISHAK.K.JOHNSON PARVATHY S. MARILIN ROMEO RESPONDENT/S: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 BY

ADV. NOUSHAD.K.A,SR PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06.02.2025, ALONG WITH Bail Appl..1495/2025 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
THURSDAY, THE 6TH DAY OF FEBRUARY 2025 / 17TH MAGHA,
1946 BAIL APPL. NO. 1509 OF 2025 CRIME NO.544/2024 OF
Thodupuzha Police Station, Idukki PETITIONER/S: BINILKUMAR AGED
40 YEARS S/O GOPINATHAN, ATTAYATHU HOUSE,
KURUPPANPADY KARA, RAYANANGALAM VILLAGE, ERNAKULAM
DISTRICT, KERALA, PIN - 683545 BY ADVS. VISHAK.K.JOHNSON
MARILIN ROMEO PARVATHY S. RESPONDENT/S: STATE OF
KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT
OF KERALA, PIN - 682031 BY ADV. HRITHWIK.C.S, SR PP THIS BAIL
APPLICATION HAVING COME UP FOR ADMISSION ON 06.02.2025,
ALONG WITH Bail Appl..1495/2025 AND CONNECTED CASES, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
P.V.KUNHIKRISHNAN, J ----- B.A.Nos.1495, 1509,
1479 & 1505 of 2025 ----- Dated this the 06th day of
February, 2025

CO M MON ORDER

These Bail Applications are filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS). These Bail Applications are connected and filed by one and the same person.

2. Petitioner is an accused in Crime Nos.2062/2023, 1920/2023 & 24/2024 of Perumbavoor Police Station and Crime No.544/2024 of Thodupuzha Police Station, registered alleging offences punishable interalia under Sections 406 and 420 IPC.

3. The prosecution case is that, the accused

collected huge amount from the defacto complainant in these cases, offering job at Singapore and the job is not provided and the amount is also misappropriated. It is also alleged that the accused forged visa and handed over to the defacto complainant.

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

5. The counsel for the petitioner submitted that

the petitioner is in custody from 25.01.2025. The counsel submitted that the allegation against the petitioner is not correct. Petitioner is ready to abide by any conditions, if this Court grants him bail.

6. The Public Prosecutor opposed the bail application. He submitted that there are eight other cases also registered against the petitioner with same set of allegations.

7. This Court considered the contention of the petitioner and the Public Prosecutor. It is true that the allegation against the petitioner is serious. The petitioner is in custody from 25.01.2025 onwards. The indefinite incarceration of the petitioner may not be necessary. Petitioner can be released on bail after imposing stringent conditions.

8. 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.

9. Moreover, in Jalaluddin Khan v. Union of India [2024 KHC 6431], the Hon'ble Supreme Court observed that:

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 Art.21 of our Constitution. (underline supplied)

10. In *Manish Sisodia v. Directorate of Enforcement* [2024 KHC 6426], also the Hon'ble Supreme Court observed that:

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".

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. Petitioner shall be released on bail on executing a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

2. 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.

3. Petitioner shall not leave India without permission of the jurisdictional Court.

4. 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.

5. 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 there is any violation of the above conditions. Sd/- P.V.KUNHIKRISHNAN JUDGE SSG The Crime Number mentioned in the final order dated 06.02.2025 in B.A No.1509/2025 stands corrected and substituted as "558 OF 2024 of Thodupuzha Police Station" instead of "544 of 2024 of Thodupuzha Police Station" as per

order dated 07.03.2025 in CrI.M.A No.1/2025 in B.A

Sd/- DEPUTY REGISTRAR

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