

Adin Nasar vs State of Kerala

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Court : Kerala

Decided On : Mar-28-2025

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Bail Appl./3998/2025

Appellant : Adin Nasar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 28TH DAY OF MARCH 2025 / 7TH CHAITHRA, 1947
BAIL APPL. NO. 3998 OF 2025 CRIME NO.1061/2024 OF
VADAKKEKAD POLICE STATION, THRISSUR
PETITIONER(S)/ACCUSED NO. 1 & 2: 1 ADIN NASAR AGED 36
YEARS, S/O. NAZAR, RESIDING AT GAZAL HOUSE, THEKKENADA,
HARIPPAD P.O, ALAPPUZHA DISTRICT, PIN - 690 514 2 VAHEEDA
NASSAR AGED 55 YEARS, W/O NASAR, RESIDING AT GAZAL
HOUSE, THEKKENADA, HARIPPAD P.O, ALAPPUZHA DISTRICT.,
PIN - 690 514 BY ADVS. BINU BABUKUTTAN VIDHU M.UNNITHAN
AROMALUNNI M.S. RATHEESH C. HARI SANKAR V.

RESPONDENT(S): 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682 031 2 THE STATION HOUSE OFFICER, VADAKEKAD POLICE STATION, THRISSUR REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682 031 BY ADV.: SR PP - NOUSHAD K A THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- Dated
this the 28th day of March, 2025

ORDER

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

2. The petitioners are accused in Crime No.1061/2024 of Vadakekad Police Station, Thrissur. The above case is registered against the petitioners alleging offence punishable under Section 498A of IPC.

3. The prosecution case is that the accused mentally and physically harassed the defacto complainant. Hence, it is alleged that the accused committed the offence.

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

5. The counsel for the petitioners submitted

that, some disputes are pending before the Family Court. The counsel submitted that it is a matrimonial offence and no such incident happened as alleged. The counsel also submitted that the petitioners are ready to abide any condition imposed by this Court, if this Court grant them bail.

6. The Public Prosecutor opposed the bail application.

7. This Court considered the contentions of

the petitioners and the Public Prosecutor. Admittedly, there is some matrimonial disputes pending before the Family Court between the 1st petitioner and the defacto complainant. 1st petitioner is the husband of the defacto complainant. Matrimonial offences are

alleged against the petitioners. Considering the facts

and circumstances of the case, I think, custodial interrogation of the petitioners are not necessary. The petitioners 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 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 Cri LJ 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.

10. 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 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) 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. 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.

7. 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 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].

8. If any of the above conditions are

violated by the petitioners, the jurisdictional Court can cancel the bail in 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. Sd/- P.V.KUNHIKRISHNAN nvj JUDGE

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