

Badusha 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./4276/2025

Appellant : Badusha

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. 4276 OF 2025 CRIME NO.51/2025 OF Ernakulam
North Police Station, Ernakulam AGAINST THE ORDER/JUDGMENT
DATED IN Bail Appl. NO.2782 OF 2025 OF HIGH COURT OF KERALA
PETITIONER/S: BADUSHA AGED 30 YEARS S/O SUBAIR,
CHAKKARAPARAMBU HOUSE, 20/1245C, PALLURUTHY,
ERNAKULAM, PIN - 682006 BY ADV K.V.SABU RESPONDENT/S:
STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 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
----- B.A.No.4276 of 2025 -----

Dated this the 28th day of March, 2025

ORDER

This Bail Application is filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS).

2. Petitioner is the seventh accused in Crime No.51/2025 of Ernakulam North Police Station. The above

case is registered against the petitioner alleging offences punishable under Sections 109(1), 118(2) r/w 3(5) of the Bhartiya Nyaya Sanhita (BNS), 2023. Petitioner was arrested on 13.03.2025 and he is in custody.

3. The prosecution case is that; on 27.01.2025

accused Nos.1 to 4, attacked the complainant's cousin brother Uneesh. The crime was registered on the basis of a statement given by the complainant. According to him, four persons, who were wearing face mask attacked the complainant's cousin brother with an unknown weapon. It is alleged that the petitioner, who is the seventh accused aided the main accused to identify the victim.

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

5. The counsel for the petitioner submitted that,

the petitioner is in custody from 13.03.2025. The police custody is also given and that period is also over. He also submitted that, the petitioner is ready to abide by any conditions, if this Court grants him bail.

6. Public Prosecutor opposed the bail application. He submitted that there is one more case

registered against the petitioner. The counsel for the petitioner submitted that, that case is already quashed by this Court and the offences alleged were minor offences.

7. This Court considered the contentions of the petitioner and the Public Prosecutor. It is true that, the allegations against the petitioner and the other accused are

very serious. But, the petitioner is in custody from 13.03.2025. Indefinite incarceration of the petitioner may not be necessary. Considering the facts and circumstances of the case, I think, the 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. 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.

6. 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

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