

Akbar vs State of Kerala

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Court : Kerala

Decided On : Apr-11-2025

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Bail Appl./5216/2025

Appellant : AKBAR

Respondent : State of Kerala

Judgement :

BAIL APPL. NO. 5216 OF 2025 1

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. 5216 OF 2025 CRIME NO.112/2025 OF Wandoor
Police Station, Malappuram AGAINST THE ORDER/JUDGMENT
DATED IN Bail Appl. NO.3563 OF 2025 OF HIGH COURT OF KERALA
PETITIONER/S: AKBAR AGED 43 YEARS S/O LATHEEF ,
KOVILAKATHU PARAMBIL HOUSE, PERUMANNA, KOTTATHAYAM, ,
KOZHIKODE CITY, KOZHIKKODE DISTRICT, PIN - 673019 BY ADV
ABDUL HADI M.P. RESPONDENT/S: 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF

KERALA, PIN - 682031 2 SUB INSPECTOR OF POLICE WANDOOOR
POLICE STATION, MALAPPURAM DISTRICT, PIN - OTHER
PRESENT: BAIL APPL. NO. 5216 OF 2025 2 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: BAIL APPL. NO. 5216 OF 2025 3 P.V.KUNHIKRISHNAN,
J ----- B.A. No.5216 of 2025
----- Dated this the 11th day of April, 2025

ORDER

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

2. Petitioner is an accused in Crime No.112/2025 of Wandoor Police Station. The above case is

registered against the petitioner alleging offences punishable under Sections 20(b)(ii)B and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

3. Prosecution allegation in brief is that on

11.02.2025, at 07.35 p.m., near Maharaja Residency on Koorikund by-pass road in Wandoor amsom, A1 and A2 were found possessing 8.2 Kg of ganja on scooter bearing Reg. BAIL APPL. NO. 5216 OF 2025 4 No. KL 56 Q 4895. Petitioner was arrested on 11.02.2025 and he is in judicial custody since then.

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

5. The counsel for the petitioner submitted that the petitioner is the 3rd accused and no recovery is effected from the petitioner. The counsel submitted that the petitioner is in custody from 11.02.2025. The investigation is not completed. The Public Prosecutor opposed the bail application. The Public Prosecutor submitted that there is criminal antecedents to the petitioner. But, the Public Prosecutor submitted that the investigation is not completed.

6. Admittedly, the petitioner is in custody from 12.02.2025. He is in custody for about 59 days. As on today, the investigation is not completed. Moreover, the contraband seized is intermediate quantity of Ganja. Therefore, the rigour under Sec. 37 of the NDPS Act is not BAIL APPL. NO. 5216 OF 2025 5

attracted. Considering the facts and circumstances of this case and the period of detention, I think the petitioner can be released on bail, after imposing stringent conditions. But, I make it clear that if the petitioner commits similar offence in future, the investigating officer can file appropriate application for cancellation of bail before the jurisdictional court and if such an application is filed, the jurisdictional court can pass appropriate orders, even though this order is passed by this Court.

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. BAIL APPL. NO. 5216 OF 2025 6

8. 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)

BAIL APPL. NO. 5216 OF 2025 7

9. 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".

10. 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: BAIL APPL. NO. 5216 OF 2025 8

1. Petitioner shall be released

on bail on executing a bond for Rs.1,00,000/- (Rupees One lakh 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/her

from disclosing such facts to the Court or to any police officer.

3. Petitioner shall not leave India without permission of the BAIL APPL. NO. 5216 OF 2025 9 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 BAIL APPL. NO. 5216 OF 2025 10 the jurisdictional court to cancel the bail, if there is any violation of the above conditions. Sd/- P.V.KUNHIKRISHNAN JUDGE SKS

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