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**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT**

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 24TH DAY OF FEBRUARY 2025 / 5TH PHALGUNA, 1946

BAIL APPL. NO. 2241 OF 2025

CRIME NO.111/2025 OF BADIADUKKA POLICE STATION, KASARGOD

PETITIONER(S):

**NOUSHAD K
AGED 57 YEARS
S/O ABDUL KAREEM K K, SUHARAS, MOOZHICKARA PO,
TIRUVANGAD, KANNUR, KERALA -, PIN - 670 103**

**BY ADVS.
R.ANAS MUHAMMED SHAMNAD
T.U.SUJITH KUMAR
C.C.ANOOP
THAREEK T.S.
HAMDAN MANSOOR K.
K.K.DHEERENDRAKRISHNAN(K/1234/2003)**

RESPONDENT(S):

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 031**
- 2 STATION HOUSE OFFICER
BADIADKA POLICE STATION,
KASARAGODE DISTRICT-, PIN - 671 551**

BY ADV.:

SR.PP-SRI.HRITHWIK C.S.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
24.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



CR

P.V.KUNHIKRISHNAN, J

B.A.No.2241 of 2025

Dated this the 24th day of February, 2025

O R D E R

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

2. Investigation of a criminal case means investigation of the case of the complainant and the accused. There cannot be any unilateral investigation of the case put up by the complainant alone. Merely because the de facto complainant is a lady, there is no presumption that, in all cases, her versions are gospel truth, and the police can proceed based on her statement without considering the case of the accused. Nowadays, there is a tendency to implicate innocent people in criminal cases with serious allegations of sexual assault. If the police find that the allegations of such women against men are false, they can very well take action against the complainants also. The law



permits for the same. But some of the police officers are not ready to take such action, apprehending that it will backfire on them. No such apprehension is necessary. The court will take care of the interest of such officers, if their findings are correct. The damages caused to a citizen because of false implication cannot be compensated by payment of money alone. His integrity, position in the society, reputation, etc, can be ruined by a single false complaint. The police authorities should be alert and vigilant, to find the truth in criminal cases during the investigation stage itself. Nowadays, it may take years to consider the case of such innocent persons by a court of law, if a charge sheet is filed. In such situations, the investigating authorities should think twice before registering and filing charge sheets in such cases. The court is burdened with several cases in which serious questions of law and facts are involved. Hence, it is the duty of the police to separate the chaff from the grain, before submitting final reports in criminal cases.

3. I had occasion to consider a similar situation earlier.

In **Rohit Krishna v. State of Kerala & Anr.** [2023 (6)



KHC 249] this court observed like this:

“xxxx xxxx xxxx

15. This is a strange situation in which a case is registered for affixing a poster on an electricity post which according to prosecution caused a damage to the tune of Rs.63/- to the Electricity Board. Since, S.140 of the Electricity Act is added, the matter has to be considered by the special court, which is a Sessions Court. The Sessions Court has to spend a lot of time to dispose a sessions case. The Sessions Court has to take cognizance of the offence based on the final report and has to issue process to the accused, the process server or the authority concerned has to serve summons to the accused, the accused has to engage a lawyer, appear before the Sessions Court and get bail, the Sessions Court has to frame charge as per the provisions of the Criminal Procedure Code, the prosecution has to adduce evidence, the defence has to cross examine the witness, thereafter, the statement under S.313 Cr.P.C. is to be recorded, then the defence evidence if any has to be recorded, thereafter, the matter has to be heard. Subsequently, the Sessions Judge has to pronounce a judgment. The allegation in a nutshell is that there is a loss of Rs.63/- to the Electricity Board by affixing a poster of a



recognized political party on the electric post using gum. A certificate is issued by the Asst. Engineer, Electric Section, Kunnamkulam to the effect that for removing the poster from the electric post, Rs. 63/- each is necessary. For this purpose, a sessions trial is to be conducted by a court of law. Whether this is to be allowed is the question. A Police Officer has a duty to decide whether a case is to be charge sheeted or not, in the facts and circumstances of each case. Common sense is to be used by the investigating authority in these types of cases. A Sessions Judge has to spend several days to dispose of these types of cases, when there is pendency of major cases awaiting trial. As I stated earlier, S.95 of the IPC says that nothing is an offence if the harm is so slight that no person of ordinary sense and temper would complain of such harm. For the alleged loss of Rs.63/- because of affixing a poster on an electric post, the investigating officer in this case filed the charge - sheet. In effect, the prosecution case is that one single poster is affixed on a single electricity post. If that is the case, for the loss of Rs.63/-, the entire judicial machinery has to work for days. A judicial officer has to spend lot of time to dispose this case. In such situation, it is the duty of the police officers to find out whether such



cases are to be charge sheeted or not. A simple warning to the persons who affix the posters is more than enough in such situation. There is a dialogue in a Malayalam movie named "Action Hero Biju" which is like this:

"പാവപ്പെട്ട ആൾക്കാരുടെ ജില്ലാ കോടതിയും ഹൈക്കോടതിയും സുപ്രീംകോടതിയും ഈ പോലീസ് സ്റ്റേഷൻ ആണ്...."

16. It means that as far as the common people are concerned, the Police Station is their District Court, High Court and the Supreme Court. This Court is not endorsing the above dialogue. But, in some situations, common sense is to be invoked by the Police officials while submitting a final report. Several cases can be closed from the Police Station itself. The Police Station is a place where a common man can enter and submit their grievance at any time. In the State of Kerala, several Police stations are declared as "Jana Mythri Police stations". Nowadays, the Police Stations in the State are citizen-friendly. Even children's entertainment area is also there in some Police Stations. Several cases can be settled from the Police Station itself without referring the matter to the court of law. That is why I said that a common sense is necessary before submitting a final report. Simply because a Police Officer is having knowledge in law, will not suffice in all situations. The



famous Malayalam Poet Poonthanam who is also known as "Bhakthakavi" in his "Jnanappana" wrote like this, centuries ago:

" വിദ്യകൊണ്ടറിയേണ്ടതറിയാതെ
വിദ്വാനെന്ന് നടിക്കുന്നതു ചിലർ...."

17. It means that some do not even know the knowledge of "what" has to be acquired by Education and still act as if they are Vidwans or Scholars. Education alone is not sufficient to act in certain situation. Common sense is also necessary."

4. The same principle is applicable as far as frivolous complaints are concerned. Investigating authorities should investigate the case of the complainant and accused and thereafter file a charge sheet before a court of law based on their finding. A court of law cannot conduct an investigation of a case. The duty of the court is to decide the cases based on the charge sheet submitted by the investigating authority. Therefore, I reiterate that, there cannot be any unilateral investigation of the case put up by the complainant alone, merely because the de facto complainant is a lady. There is no presumption that, in all



cases, her versions are gospel truth, and the police cannot proceed based on her statement alone without considering the statement of the accused.

5. Coming back to the facts of this case, the petitioner in this case is an accused in Crime No.111/2025 of Badiadka Police Station. The above case is registered against the petitioner alleging an offence punishable under Section 75(1) of the Bharatiya Nyaya Sanhita (BNS), 2023. The prosecution case is that, on 20.12.2024, the accused, who is the Manager of a Company in which the de facto complainant was working, grabbed the victim by his arms with sexual intent. Hence, it is alleged that the accused committed the offence.

6. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor. Counsel for the petitioner submitted that this is a false case foisted against the petitioner by the de facto complainant. According to the counsel, the de facto complainant was an employee of the petitioner's establishment. She was dismissed from the Company because of her inefficiency and non-performance. It is the case of the petitioner that on the day she was



dismissed, the de facto complainant verbally abused the petitioner and other staff. It is also alleged that the defacto complainant threatened that “they would soon realize what she is capable of”. Because of this threat, the petitioner filed an Annexure-A2 complaint before the Station House Officer, Badiadka Police Station. Annexure-A3 is the receipt showing that the complaint was received on 14.01.2025 at 01.25 PM. The present crime is registered based on the complaint of the defacto complainant on 07.02.2025 in connection with the alleged incident that happened on 20.12.2024. According to the petitioner, this is a false case foisted against the petitioner. The petitioner also produced an audio clip, which, according to the petitioner, is that of the defacto complainant, in a pen-drive as evidenced by Annexure-A4. A copy of the transcription of the audio clip of the defacto complainant is produced as Annexure-A5. The counsel submitted that in the light of Annexures-A2 to A5, it is clear that the allegation against the petitioner is false.

7. The Public Prosecutor opposed the bail application. The Public Prosecutor submitted that there is nothing to disbelieve the statement of the defacto



complainant. The allegation against the petitioner is serious.

8. This Court considered the contentions of the petitioner and the Public Prosecutor. This Court perused the First Information Statement given by the victim. Serious allegations are made against the petitioner in the First Information Statement. But Annexure-A2 is a complaint filed by the petitioner to the Station House Officer, Badiadka Police Station, on 14.01.2025. It will be better to extract the contents in Annexure-A2 complaint:

"ഞാൻ ബദിയൂക്ക P.M.S. ബസ്സ് Service ന്റെ Manager ആയും Margin Free Market ന്റെ Manager ആയും ജോലി ചെയ്യുകയാണ്. രണ്ട് ദിവസം മുമ്പ് ജോലിയിൽ നിന്നും Kavitha എന്നവരെ കൃത്യമായി ജോലി ചെയ്യാത്തതുകൊണ്ടു ഒഴിവാക്കിയിരുന്നു. അതിന്റെ ദേഷ്യത്തിൽ എന്നെയും Margin Free Market - ൽ ജോലി ചെയ്യുന്ന sunaf നെയും വളരെ മോശമായ ഭാഷയിൽ ചീത്ത വിളിക്കുകയും ഭീഷണിപ്പെടുത്തുകയും ചെയ്തിരിക്കുന്നു. ആയതിനാൽ പ്രസ്തുത കാര്യം അന്വേഷിച്ച് തക്കതായ നടപടി സ്വീകരിക്കണമെന്ന് വിനീതമായി അപേക്ഷിക്കുന്നു."

9. Annexure-A2 complaint was received by the Station House Officer, Badiadka Police Station, on 14.01.2025. After Annexure-A2 was received by the Station House Officer, Badiadka Police Station, Annexure-A1 FIR was



registered based on the complaint of the de facto complainant on 07.02.2025. The alleged incident mentioned in Annexure-A1 FIR happened on 20.12.2024. This Court also heard the conversation in the pen-drive produced as Annexure-A4. According to the petitioner, the same is that of the de facto complainant. On hearing the above conversation(if it is the sound of the de facto complainant), it can be seen that the main grievance against the de facto complainant is that she was not performing her work properly. It can also be seen in the last portion of the conversation that she threatened that, 'he would soon realize what she was capable of'. Thereafter, the present complaint was filed. It seems that no investigation has been conducted by the investigating officer on the Annexure-A2 complaint.

10. I am of the considered opinion that, when certain materials are produced by the accused in a case against the defacto complainant, it is the duty of the Investigating Officer to consider the same as well during the course of the investigation. Here is a case where the petitioner filed a complaint on 14.01.2025 stating that the de facto



complainant used abusive language against the petitioner and threatened him. It is clear that Annexure-A2 was received on that date itself by the Station House Officer, as evidenced by Annexure-A3. There is nothing to show that the Station House Officer investigated Annexure-A2. The petitioner produced Annexure-A4 pen-drive in which there is some threatening voice from a lady, in the last portion of the conversation. According to the petitioner, the voice is that of the de facto complainant. If that is the case, the Investigating Officer has to investigate that fact also. Simply because a lady filed a complaint, the Investigating Officer cannot blindly accept the same and proceed against the accused. The genuineness of the statement of the defacto complainant can be verified easily by the Investigating Officer during the course of the investigation. In such circumstances, this is a fit case in which the Investigating Officer ought to have investigated the matter based on the Annexure-A2 complaint and also based on the Annexure-A4 pendrive. The petitioner shall produce the pendrive containing the alleged conversation of the defacto complainant before the Investigating Officer. The



Investigating Officer will investigate the same also, and if the de facto complainant is found to have submitted a false case against the petitioner, appropriate action, in accordance with law, should be taken.

11. Coming back to the prayer for bail, in the light of Annexures-A2 to A5, I am of the considered opinion that the petitioner can be released on bail after imposing stringent conditions. But I make it clear that the observation in this order is only for deciding this bail application and the investigating officer is free to investigate the case untrammelled by any observation in this order. The principle laid down by this court in the order dated BA No. 2181 of 2025 in this regard is applicable in letter and spirit in this case also.

12. 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.

13. 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 CriLJ 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.”

14. 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 directions:

- 1. The petitioner 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 petitioner, he 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 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.

4. The 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 petitioner shall produce a copy of the Annexure-A2 complaint and also produce the audio clip, he produced before this Court as Annexure-A4, before the Investigating Officer. The Investigating Officer will conduct a thorough investigation based on this and take appropriate action in accordance with the law.

6. 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 petitioner even while the petitioner is 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].*

7. *If any of the above conditions are violated by the petitioner, 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,
JUDGE**