



2025:KER:26875

BAIL APPL. NO. 4085 OF 2025

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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. 4085 OF 2025

CRIME NO.2097/2024 OF CBCID, KOZHIKODE, Kozhikode
AGAINST THE ORDER/JUDGMENT DATED IN Bail Appl.
NO.619 OF 2025 OF HIGH COURT OF KERALA

PETITIONER/ACCUSED:

SHUHAIB K
AGED 24 YEARS
S/O USAIMATH CHOLAYIL HOUSE, (P O) KODUVALLY
KOZHIKODE, PIN - 673572
BY ADVS. S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
ANILKUMAR C.R.
K.S.KIRAN KRISHNAN
DIPA V.
M.MUHAMMED FIRDOUSE(K/459/2013)

RESPONDENT/STATE

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
SR PP-HRITHWIK C S

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
28.03.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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P.V.KUNHIKRISHNAN, J.

B.A. No.4085 of 2025

Dated this the 28th day of March, 2025

ORDER

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

2. Petitioner is the accused in Crime No.2097/2024 of CBCID, Kozhikode. The above case is registered against the petitioner alleging offences punishable under Sections 316(2), 316(3), 316(5), 318(2), 318(4), 61(2)(a) and 3(5) of the Bharatiya Nyaya Sanhita (for short, BNS).

3. The allegation in this case is that there was leakage of the question paper. The Commissioner of Examinations and Director of General Education Department wrote a letter to the Crime Branch Head Quarters alleging that the questions in the question papers of the Second Terminal Examination of 2023 and of the First and Second Terminal examination in 2024 were released in the YouTube channel of 'MS Solutions' owned by the petitioner, hours before the start



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of the examination under the name 'question prediction'. It is further stated that these questions were predicted by the said person, who is a Chemistry Teacher, by leaking the question paper. Videos of questions being released in this way before the examination of all subjects are seen on this channel, and all these questions appeared in the examination is the complaint. Hence, the authority demanded an investigation into this matter. As per the direction of the State Police Chief, a preliminary inquiry was conducted by a special team headed by the Dy.S.P. Crime Branch under the direct supervision of Superintendent of Police, Crime Branch, Kozhikode and Wayanad. In the preliminary report, it was recommended to register a case in the State Crime Branch Unit. Accordingly, the Additional Director General of Police, Crime Branch Headquarters, Thiruvananthapuram, granted permission to register a crime in the Crime Branch Police Station and entrusted the investigation of the case to the Dy. S.P. II, Crime Branch, Kozhikode Unit. Accordingly, Crime No.2097/2024 was registered by the Crime Branch Police Station alleging the aforesaid offences.



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

5. The counsel for the petitioner submitted that the petitioner is in custody from 06.03.2025. The counsel submitted that the petitioner surrendered when this Court rejected the anticipatory bail application and the petitioner is in custody from that day onwards. The counsel further submitted that the petitioner is ready to abide any conditions if this Court grant him bail. The Public Prosecutor opposed the bail application.

6. The consideration of a bail application under Section 482 BNSS and 483 BNSS are different. This Court considered the bail application of the petitioner under Section 482 BNSS and dismissed the same by a detailed order as evident by Annexure-1. Now the petitioner surrendered after Annexure-1 order. He is already interrogated by the Investigating Officer after getting custody. Now he is in jail from 06.03.2025. No criminal antecedent is alleged against the petitioner. Indefinite incarceration of the petitioner is not necessary. The petitioner can be directed to co-operate with



the investigation.

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.

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)

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:

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/her 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 petitioner shall appear before the Investigating Officer on all Mondays at 10 am, till final report is filed.
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.



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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 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**

jv