



2024:KER:96490

BAIL APPL.NO.10533 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 19TH DAY OF DECEMBER 2024 / 28TH AGRAHAYANA, 1946

BAIL APPL. NO. 10533 OF 2024

CRIME NO.1889/2024 OF VIZHINJAM POLICE STATION,

THIRUVANANTHAPURAM AGAINST THE ORDER/JUDGMENT DATED

12.12.2024 IN CMP NO.4158 OF 2024 OF JUDICIAL MAGISTRATE OF

FIRST CLASS COURT - VII, NEYYATTINKARA

PETITIONER/S:

**NITHIN GOPI
AGED 21 YEARS
S/O.GOPINATHAN PILLA, VADAKKATHIL
VEEDU, KUTTIYIL, EDAMANASSERY, MAINAKAPPALLI
VILLAGE, KOLLAM DISTRICT, PIN - 690519**

BY ADV SOORANAD S.SREEKUMAR

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031**
- 2 SUB INSPECTOR OF POLICE
VIZHINJAM POLICE STATION , THIRUVANANTHAPUTAM CITY,
PIN - 695521**



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OTHER PRESENT:

SRI RENJITH GEORGE SR, PP

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
19.12.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



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'CR'

P.V.KUNHIKRISHNAN, J

B.A.No. 10533 of 2024

Dated this the 19th day of December, 2024

O R D E R

A hospital building is not just a physical structure, but a symbol of hope and healing for those who enter its doors. Any vandalism in hospitals should be dealt by the police seriously and the judiciary will be very vigilant in those cases. This is a case in which the accused trespassed in to a hospital and damaged a portion of the hospital. This Bail Application is filed by the accused under Section 483 of Bharatiya Nagarik Suraksha Sanhita.

2. Petitioner is an accused in Crime No.1889 of 2024 of Vizhinjam Police Station registered alleging offences punishable under Sections 333, 118(1), 324(5), 296(b) of BNS and 3, 4(1), 4(2) of Kerala Healthcare Service persons and



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Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act 2012 (For short, Act 2012). Petitioner was arrested on 07.12.2024 and he is in custody.

3. The prosecution case is that, on 07.12.2024, at 07.30 PM the accused criminally trespassed into the Ayurveda Hospital situated at Mukkola and uttered obscene words against the staff of the said hospital and hit on the front glass of the said hospital with iron rod and destroyed it and caused injury to the staffs of the aforementioned hospital and also threw flower pots of the said institution and broken it and thus, the accused caused a loss of Rs.10,000/- to the hospital. Hence, it is alleged that the accused has committed the offences.

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

5. The counsel for the petitioner submitted that, the petitioner is in custody from 07.12.2024. The petitioner is ready to abide by any conditions, if this court grants him bail.



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6. The Public Prosecutor opposed the bail application and submitted that, the petitioner trespassed into an Ayurveda Hospital and committed damages in the hospital to the tune of Rs.10,000/-.

7. This Court considered the contentions of both the petitioner and the Public Prosecutor.

8. While considering a bail application in connection with the Prevention of Damages to Public Property Act, 1984 this Court observed that in cases in which the offence under the PDPP Act is alleged, the value of the destroyed property or even more should be directed to be deposited by the accused as a condition for granting bail to them. I am of the considered opinion that while considering the bail application in cases in which the offences under the Kerala Healthcare Service persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012, is alleged, this Court can adopt the same principle. This Court in



Hemanth Kumar and Others v. Sub Inspector of Police and Another [2011 (4) KHC 89] observed that;

8. I am of the view that in cases where public property is destroyed, the value of the same or even more should be directed to be deposited by the accused as a condition for granting bail to them. Otherwise, the loss sustained to the State would not be realised at all. Courts cannot be mute spectators to the wanton destruction of public property. Nobody should be allowed to destroy public property and claim success of the strikes on the basis of the quantum of loss sustained to the State. It is easy to destroy; but it is not so easy to make.

9. If the accused are found not guilty and they are accordingly acquitted, they would be entitled to get refund of the amount deposited by them. If the Court comes to the conclusion that the accused are liable to pay any fine, the amount in deposit can be utilised for payment of fine.

9. In **Hemachandran M. T. @ Kamalesh and Others v. Sub Inspector of Police and Another [2011 (4) KHC 689]** this Court observed that;



24. The PDPP Act was enacted with a view to curb acts of vandalism and damage to public property, including destruction and damage caused during riots and public commotion. The PDPP Act is an Act to provide for prevention of damage to public property and for the matters connected therewith. The Act defines "public property". S.2 (a) of the PDPP Act provides that unless the context otherwise requires, "mischief" shall have the same meaning as in S.425 of the Indian Penal Code. Chapter XVII of the Indian Penal Code deals with offences against property. S.425 to 440 of the Indian Penal Code deal with "mischief". Punishment under these Sections vary from imprisonment for a term which may extend to three months to a term which may extend to ten years. Irrespective of the term of imprisonment as punishment, all the offences under Chapter XVII of the IPC are covered by S.437 (3) CrIPC S.5 of the PDPP Act provides that "no person accused or convicted of an offence punishable under S.3 or 4 shall, if in custody, be released on bail or on his own bond unless the prosecution has been given an opportunity to oppose the application for such release. The fourth proviso to S.437 CrIPC provides for opportunity of hearing to the Public Prosecutor only if the offence



is punishable with death, imprisonment for life, or imprisonment for seven years or more. S.6 of the PDPP Act states that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. The scheme of the PDPP Act when considered along with S.437 of the Code of Criminal Procedure, it would be clear that in the matter of granting bail, a rigorous approach is contemplated when the offences alleged are under the PDPP Act. Such rigorous approach is required in the matter of imposing conditions for granting bail also. A condition for deposit of the loss sustained to the Government as a condition for granting bail to the accused would be justified under S.437 and S.439 of the Code of Criminal Procedure.”

10. Trespass and Vandalism in hospitals is a problem faced by the hospital authorities nowadays. The reason for the same may be because of the alleged negligence/illegal acts of the doctors, nurses, staff, etc attached to that hospital. But, for that purpose, the hospital building or hospital materials cannot be destroyed. The hospitals are the



temples of modern society, where people go to worship the gods of health and wellness. Therefore any vandalism in hospitals should be avoided using the iron hands of law itself. Hence, some restrictions are necessary while granting bail in such cases also. The preamble of Act 2012 reads like this:

“WHEREAS, it is expedient to prohibit violence against healthcare service persons and to prevent damage and loss to property in healthcare service institutions and to provide for matters connected therewith or incidental thereto;”

11. The preamble itself shows that the intention of the legislature is prevention of damages and loss to property in healthcare institutions. As per Section 4(4) of the Act 2012, any offence under sub section (1) shall be cognizable and non bailable. That shows the serious concern of the legislature in these types of cases. Hence while granting bail, in cases where offences under the Kerala Healthcare Service persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012 are alleged and if any



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damage is caused to the healthcare service institutions by the accused, the courts should impose conditions in the light of the principle laid down by this court in **Hemanth Kumar and Others v. Sub Inspector of Police and Another [2011 (4) KHC 89] & Hemachandran M. T. @ Kamalesh and Others v. Sub Inspector of Police and Another [2011 (4) KHC 689]**. If the accused are found not guilty and they are accordingly acquitted, they would be entitled to get refund of the amount deposited by them. If the Court comes to the conclusion that the accused are liable to pay any fine/compensation, the amount in deposit can be utilised for payment of fine/compensation. I am also of the opinion that the legislature should consider making appropriate amendment in Act 2012 to include such a condition for getting bail in these types of cases. The Registry will forward a copy of this order to the Chief Secretary, State of Kerala for appropriate action.



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12. In this case, according to the prosecution, the damage caused to the hospital is Rs.10,000/-. Considering the facts and circumstances of the case, I think the petitioner can be released on bail with a direction that, the petitioner shall deposit an amount of Rs.10,000/- before the Jurisdictional Court. If the accused is found not guilty and is accordingly acquitted in this case, the accused would be entitled to get the refund of the amount deposited. If the court comes to the conclusion that the accused is liable to pay fine, then this amount can be utilised for the payment of fine/compensation.

13. Therefore, 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.



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2. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner shall cooperate 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. Petitioners 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. If any of the above conditions are violated by the petitioner, the jurisdictional Court can



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cancel the bail in accordance to law, even though the bail is granted by this Court. The prosecution is at liberty to approach the jurisdictional court to cancel the bail, if there is any violation of the above conditions.

6. The petitioner shall deposit an amount of Rs.10,000/- before the Jurisdictional Court at the time of executing the bond. The amount deposited will be subject to the final decision of the Jurisdictional Court in Crime No.1889/2024 of Vizhinjam Police Station. If the accused is found not guilty and he is accordingly acquitted, he would be entitled to get the refund of the amount he deposited. If the court comes to the conclusion that the accused is liable to pay fine/compensation, then this amount can be



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utilised for the payment of fine or compensation to the hospital concerned.

7. Registry will forward a copy of this order to the Chief Secretary, State of Kerala for appropriate action in the light of the observations in paragraph 8 of this order.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

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APPENDIX OF BAIL APPL. 10533/2024

PETITIONER'S ANNEXURES

- | | |
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| ANNEXURE 1 | FIR IN CRIME 1889 OF VIZHINJAM POLICE STATION |
| ANNEXURE 2 | COPY OF ORDER IN CMP 4158/2024 OF JFMC VII , NEYYATTINKARA |