



2025:KER:29600

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 9TH DAY OF APRIL 2025 / 19TH CHAITHRA, 1947

BAIL APPL. NO. 3680 OF 2025

CRIME NO.733/2025 OF CBCID, ERNAKULAM, Ernakulam

PETITIONER/S:

1 K N ANAND KUMAR
AGED 70 YEARS
S/O T D NANDAPPAN PILLAI TC 9/1108 AJITH BUILDINGS,
SASTHAMANGALAM P O SASTHAMANGALAM VILLAGE
THIRUVANANTHAPURAM, PIN - 695010

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
ANILKUMAR C.R.
K.S.KIRAN KRISHNAN
DIPA V.

RESPONDENT/S:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA, PIN - 682031



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2 THE DIRECTOR GENERAL OF PRISON AND CORRECTIONAL
ADMINISTRATION
PRISON HEAD QUARTERS POOJAPURA , THIRUVANANTHAPURAM
IS SUO MOTU IMPEADED AS R2 VIDE ORDER DATED 20-3-25

SRI.NOUSAHD KA, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
01.04.2025, ALONG WITH Bail Appl..3713/2025, THE COURT ON
09.04.2025 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 9TH DAY OF APRIL 2025 / 19TH CHAITHRA, 1947

BAIL APPL. NO. 3713 OF 2025

CRIME NO.748/CB/KNR&KSD/2025 OF CBCID, KANNUR, Kannur

AGAINST THE ORDER/JUDGMENT DATED 11.03.2025 IN CRMC
NO.431 OF 2025 OF DISTRICT COURT & SESSIONS COURT,
THIRUVANANTHAPURAM

PETITIONER/S:

1 K N ANAND KUMAR
AGED 70 YEARS
S/O T D NANDAPPAN PILLAI TC 9/1108, AJITH BUILDINGS
SASTHAMANGALAM P.O, THIRUVANANTHAPURAM, PIN - 695010

BY ADVS.
S.RAJEEV
V.VINAY
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DIPA V.

RESPONDENT/S:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF



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KERALA, PIN - 682031

- 2 STATATION HOUSE OFFICER
KANNUR CITY POLICE STATION, KANNUR DISTRICT., PIN -
670003

- 3 THE DIRECTOR GENERAL OF PRISON AND CORRECTIONAL
ADMINISTRATION
PRISON HEAD QUARTERS POOJAPURA ,THIRUVANANTHAPURAM IS
SUO MOTU IMPEADED AS R3 VIDE ORDER DATED 20-3-25
SRI.HRITHWIK CS, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
01.04.2025, ALONG WITH Bail Appl..3680/2025, THE COURT ON
09.04.2025 DELIVERED THE FOLLOWING:



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P.V.KUNHIKRISHNAN, J**B.A. Nos. 3680 & 3713 of 2025****Dated this the 9th day of April, 2025****ORDER**

The important point to be decided in this case is about the jurisdiction of a court to release a person on bail based on his/her sickness, in the light of the first proviso to Sec. 480(1) of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS'). Nowadays, there is a general belief in society that, if a person is arrested in connection with a case, that person can easily get bail, without even seeing the doors of jail, if he has a 'sickness', even if it is pretended. Whether a person have the right to get bail even in serious cases based on sickness? I will discuss the matter in detail in this order. No one should think that they can escape the doors of prison by pretending to be sick, when they



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are involved in serious cases with serious allegations. I am of the considered opinion that, if there is genuine sickness to them, they deserve treatment only through the jail doctor, and not by sleeping in a luxury room in a luxury hospital. The jail doctor can decide whether an expert treatment is necessary or not. They should taste the food inside the jail and not the homemade food that comes in a parcel box from their homes. There are facilities in our jail to treat any sort of illness. If there is any casualty, expert treatment also can be given, based on the recommendation of jail doctors. No one can overtake the same and go directly to a hospital after being remanded by a court (except in exceptional cases) because there are reasonable restrictions to some of the rights of a prisoner/under-trial prisoner when he/she is in jail. This court can take judicial notice of some of such instances. This Court denied anticipatory bail recently to a politician namely, PC George as per order dated 21.02.2025 in BA No. 1874/2025 (***P.C.George v. State of Kerala***, 2025 KHC Online 223). Immediately after rejecting bail, he surrendered



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before the police and it seems that he developed some physical ailments and the jurisdictional court was forced to send him to hospital instead of jail. Subsequently, he was released by the learned Magistrate without even seeing the doors of the jail. After his release, his son openly stated in the media that he was happy because his father usually will not go to the hospital and he thanked the defacto complainant in that case for filing a complaint so that a full body checkup of his father could be conducted because of his arrest. This was published in all newspapers and media. This is not only an insult to the defacto complainant, but a reminder to the judiciary also, while considering bail applications, when the person is in hospital.

2. These two bail applications are filed by one and the same person and therefore, I am disposing of these bail applications by a common order. BA No.3680/2025 is filed under Sec. 483 of the BNSS and BA No. 3713/2025 is filed under Sec. 482 of the BNSS. Admittedly, now the petitioner is in jail.

3. BA No. 3680/2025 is filed for bail under Sec. 483



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BNSS in Crime No. 733/CB/CU-II/EKM/R/2025 of CB CU-II, Ernakulam unit. The above case is registered against the petitioner and others alleging offences punishable under Secs. 316(2), 318(4), 61(2) r/w 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS'). The brief fact of the case is that, with the intention to make wrongful gain and to cause a wrongful loss to the members of the SEED Society located in Pezhakkappilly at Muvattupuzha, the accused received an amount of Rs.7,59,81,000/- through the name of the consultancy of the 1st accused namely 'Professional Service Innovations' through his account in HDFC Bank at Iyyattilmukku, Thiruvananthapuram between July 2023 to December 2024. It is stated that the accused deceived the society members by offering that they would arrange motorcycles, sewing machines, home appliances and laptops at half price by using the Corporate Social Responsibility Fund (for short 'CSR Fund') and funds from various NGOs. It is alleged that even after receiving the money, the accused neither gave the proposed articles nor refunded the



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amount to the beneficiaries. The petitioner, who is the 2nd accused is also actively involved in the above cheating, is the prosecution case.

4. BA No. 3713/2025 is filed by the petitioner apprehending arrest in Crime No. 748/CB/KNR&KSGD/R/2025. The above case is registered against the petitioner alleging offences punishable under Secs. 316(2), 318(4) and 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS'). The crime was originally registered based on the allegation that the petitioner along with six other accused persons, with an intention to obtain wrongful gain and to cause wrongful loss to the defacto complainant, who is the Secretary of the Kannur SEED Society situated at Kannur South Bazar and 494 other members of it by offering scooter for women at half the price and obtained an amount of Rs.2,96,40,000/- from them, through a bank account. The vehicle was not given to most of the beneficiaries and half the price paid by them was also not returned. Hence, it is alleged that the accused committed the offences. The



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petitioner apprehends that his arrest will be recorded in this case also.

5. Heard Adv. S. Rajeev, who appeared for the petitioner, Senior Public Prosecutor, Adv. Hrithwik CS and also Senior Public Prosecutor, Adv. Noushad KA.

6. Adv. Rajeev argued the matter in detail. Adv. Rajeev submitted that the petitioner is a 70-year-old man and has no direct involvement in the case. All the allegations against the petitioner are false. Adv. Rajeev submitted that the petitioner is the founder of 'Sri Sathya Sai Gramam Global Trust'. The counsel submitted that the petitioner has no direct contact with the 1st accused in his financial dealings. According to the counsel, the petitioner was the Managing Trustee of the National NGO Confederation in which the 1st accused was also a member. It is submitted that, as far as the activities of the 1st accused, who is the proprietor of Professional Services Innovations, regarding the supply of laptops, two-wheelers and sewing machines at 50% price are concerned, it is the sole responsibility



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of the 1st accused, Mr. Ananthu Krishnan. The petitioner has no connection with the same. The counsel submitted that the petitioner is doing several activities to the poor people in connection with his Sri Sathya Sai Gramam Global Trust. There are several educational institutions and orphanages under the trust. If the petitioner is detained in jail, the day-to-day affairs of those institutions will be affected. Several poor people rely on these institutions for their studies and livelihood. The counsel submitted that, except for the fact that some amount is credited to the account of Sai Gramam Trust, there is no allegation to the prosecution that the petitioner misappropriated or cheated anybody. Adv. S. Rajeev submitted that the petitioner is ready to abide by any conditions if this Court grants him bail.

7. The Senior Public Prosecutors, Adv. Hrithwik C.S. and Adv. Noushad K.A. opposed the bail application with vehement. They took me through the report filed by the Deputy Superintendent of Police, Crime Branch Central Unit-II, Ernakulam and submitted that, a perusal of the report and the



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documents produced along with the report would show that the petitioner has active involvement in the case. It is also submitted that in several cases, the petitioner is an accused. A detailed custodial interrogation is necessary. Only in some of the cases, the arrest is recorded. The Investigating Officers are taking steps to record the arrest of the petitioner in other cases also. In all the cases, custodial interrogation is necessary. Therefore, the bail applications of the petitioner may not be considered at this stage, is the submission.

8. This Court considered the contentions of the petitioner and the Public Prosecutors.

9. Counsel for the petitioner submitted that his first and foremost contention is that the petitioner has no direct involvement in the case and he argued the matter on merit. Therefore, I will first consider whether there is any *prima facie* case against the petitioner.

10. A perusal of the prosecution case would show that the accused offered to arrange motorcycles, sewing machines, home



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appliances and laptops at half the price by using CSR funds and funds from various NGOs. According to the petitioner, the 1st accused is in charge of the scheme. But, from a perusal of the report submitted by the investigating officer along with the documents, it is clear that the petitioner also participated in several functions organized by the 1st accused, Mr. Ananthu Krishnan in connection with the advertisement and publicity of the half-price scheme. Moreover, the main attraction of the scheme is that, based on CSR funds, motorcycles, sewing machines, home appliances and laptops will be supplied at half rate. Admittedly, the petitioner participated in some of the functions organized by the 1st accused in connection with the above scheme. The definite case of the prosecution is that, till date, the 1st accused has not obtained any CSR fund and funds from NGOs for the above project implementations. If the petitioner is innocent as he alleged, it is surprising to see that he went with the 1st accused in several functions to get beneficiaries for the half-price scheme in which there is no iota



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of materials to show that the 1st accused obtained any CSR fund or funds from NGOs. The assertion that the petitioner, without verifying the same, participated in the functions organized by the 1st accused in connection with the above scheme cannot be believed at this stage. Moreover, Ext.D produced along with the report of the Investigating Officer is the trust deed of the National NGO Confederation in which the petitioner is the founder and the Management Trustee. As per the trust deed, he shall continue to be so, during the lifetime of the trust unless he refuses to act as Management Trustee. Clause (6) of the above trust deed is important and the same is extracted hereunder:

"6. Shri Ananthu Krishnan, the sole proprietor of Professional Services Innovations, is responsible for handling all financial transactions related to the 50% subsidized supply of laptops, two-wheelers, and sewing machines to the members of the National NGO Confederation."

11. It is a signed trust deed by the petitioner, 1st accused and others. From the above, it is clear that Ananthu Krishnan, the sole proprietor of Professional Services Innovations, is



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conducting the 50% subsidized supply of laptops, two-wheelers and sewing machines to the members of the National NGO Confederation. It is true that it is stated in the above clause that the 1st accused, Ananthu Krishnan is responsible for handling all financial transactions related to the 50% subsidized supply of laptops, two-wheelers and sewing machines. When the petitioner signs a trust deed as Managing Trustee, he should know how these financial transactions are going and whether it is in a legal or illegal manner. The petitioner cannot wash his hand relying on clause (6) of the trust deed. The main contention of the 1st accused, Ananthu Krishnan is that he will proceed with the scheme based on CSR funds and funds from NGOs. Absolutely no material is there to show that the 1st accused collected the CSR fund or funds from NGOs for the above project implementation. Then why did the petitioner allow the 1st accused to do this illegal activity under the head of a trust in which the petitioner is the Managing Director? According to the prosecution, Ananthu Krishnan and the



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petitioner announced project implementation for the empowerment of women. Hence 90% of the beneficiaries involved are ladies in the above project. It is further stated in the report submitted by the Investigating Officer that about 56082 beneficiaries remitted an amount of Rs.23,24,27,200/- for getting sewing machines at half the rate out of which several beneficiaries did not receive sewing machines. Similarly, as far as the laptops are concerned, 36981 beneficiaries remitted an amount of Rs.92,22,75,000/- towards the accounts and several beneficiaries did not receive laptops either. In the case of home appliances, about 10300 beneficiaries paid the amount and a total amount of Rs.20,60,00,000/- was collected in this regard. But no one got any home appliances. As far as the scooter business is concerned, about 48523 beneficiaries remitted an amount of Rs.2,81,43,00,000/- towards the account of the 1st accused, Ananthu Krishnan and his consultancy accounts. Out of the above beneficiaries, several of them did not get the scooter and the amount deposited. This is a big financial scam in



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Kerala. This Court at this stage, cannot believe that the petitioner was not aware that the 1st accused was doing these financial transactions without the CSR fund and funds from NGOs. According to the prosecution, the promise of the petitioner, Anand Kumar is the root cause of the half-price scam. To prove the same, Ext. E photographs in the Facebook pages of Ananthu Krishnan (1st accused) are produced. According to the prosecution, Ananthu Krishnan and the petitioner Anand Kumar, often speak about the execution of half-price projects through the Corporate Social Responsibility fund and funds from various NGOs. Therefore, they intentionally contacted the political leaders of leading political parties, Ministers, and religious authorities. It is submitted by the Investigating Officer that the Facebook profile picture of Ananthu Krishnan is with the Hon'ble Prime Minister and the Facebook profile picture of Anand Kumar is with the former Hon'ble President of India Sri. Abdul Kalam and Sachin Tendulkar. The Investigating Officer submitted that the key factor and influencer in this regard is the petitioner,



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Anand Kumar.

12. Another important aspect stated in the report submitted by the Investigating Officer is that, on verification of the transaction details received from State Bank of India, Sasthamangalam Branch in the account of Sathya Sai Orphanage Trust owned and managed by Anand Kumar K.N., for the period from 06.04.2024 to 09.04.2024, 21 transactions are of Rs.60,000/- and 5 transactions are of Rs.56,000/-. All these deposits are by women. The Investigating Officer suspects that the said amount is for the half-price for scooters ('women on wheels') programmes. Every transaction conducted for scooters was received as Rs.60,000/- for 125 CC and Rs.56,000/- for 110 CC. Therefore, the 21 transactions for Rs.60,000/- and 5 transactions for Rs.56,000/- in the account of Sathya Sai Orphanage Trust are also suspected for the half-price scooter scheme. If that's true, the Sathyasai Trust also collected huge amounts directly from the beneficiaries for the above scheme. The Investigating Officer submits that, unless a detailed



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investigation is conducted in this regard, the truth cannot be revealed. In such circumstances, I am of the *prima facie* considered opinion that the petitioner has direct involvement with the 1st accused Anandu Krishnan and there are some materials to show that the Sathyasai Trust also collected the amount for the half-price scheme directly. I make it clear that the findings and observations in this order are 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. But, the Investigating Officer will conduct a thorough investigation and come out with the truth so that several beneficiaries will get back their money.

13. The beneficiaries in this case are poor people who are in the lower strata of society. When there was an offer that they would get their dream two-wheeler, sewing machine and other home appliances at half the rate, they blindly relied on the petitioner and the other accused and consequently paid their



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hard-earned money. It is not a single instance. Thousands of people paid huge amounts and crores of rupees were collected by the accused. This Court cannot shut the eyes to the tears of these poor people. Therefore, the petitioner is not entitled to any discretionary relief at this stage. In addition to that, the Investigating Officer in his report stated that, at present the petitioner is involved in 24 other crime branch cases too. The custodial interrogation of the petitioner for evidence collection is inevitable for the above 24 cases. It is also stated that out of the above 24 cases, the Investigating Officer of the 15 cases recorded the formal arrest of the petitioner at the Medical College Cell at Thiruvananthapuram. It is also submitted by the Public Prosecutor that the petitioner will be implicated in several other cases and custodial interrogation is necessary in all those cases. If that is the case, the petitioner cannot be released on bail at this stage.

14. At this stage, the counsel for the petitioner submitted that the BNSS give preference in getting bail if a person is sick.



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The counsel for the petitioner submitted that admittedly, the petitioner has got Cardiac problem and he was in the hospital after recording his arrest and an angiogram was also conducted. There was a 90% block and the petitioner is now on medication and treatment. Therefore, in the light of the first proviso to Section 480 of BNSS, the petitioner may be released on bail. The question to be decided is whether the petitioner can be released on bail based on the first proviso to Section 480 of BNSS.

15. Section 480(1) of BNSS and the first proviso to the subsection is extracted hereunder:

“Section 480 (1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but—

- (i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
- (ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an



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offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is a child or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation or for police custody beyond the first fifteen days shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.” [underline supplied]

16. A reading of the first proviso would show that the court may direct that the person referred to in clause (i) or clause (ii) can be released, if such person is sick. Can a person



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who is arrested in a serious case be released immediately by the Magistrate, simply because there is a submission that he is having sickness? I am of the considered opinion that the answer is a big 'no'. A person is arrested for the commission of a criminal offence. Our jails are well equipped to protect the prisoners and under trial prisoners. When this bail application came up for consideration on 20.03.2025, this Court directed the Director General of Prisons and Correctional Administration, Prison Headquarters, Poojappura to file a statement about the treatment facilities in all the jails in the State of Kerala to convicts/prisoners. A statement is filed by the Director General of Prisons and Correctional Services, it will be better to extract the same:

"1. Kerala Prisons & Correctional Services department have made arrangements to provide timely treatment to the inmates. Medical facilities for inmates are functioning in 3 Central Prisons (Thiruvananthapuram, Kannur & Viyyur), 2 Open Prisons (Nettukaltheri & Cheemeni) & District jail Ernakulam as doctors are posted at these places. The services of Medical Officer and Paramedical Staff (Staff Nurse / Nursing officer / Nursing Assistant, Pharmacist) are available in above places.

2. Regarding treatment facilities, the normal illness is treated by Medical Officer in hospital blocks in above locations. Inmates are also sent to all Government Medical College Hospitals, all



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Government Dental College Hospital, Regional institute of Ophthalmology, Regional Cancer Centre (RCC), Sree Chitra Thirunal institute of medical sciences and technology (SCTIMST) and Mental Health Centres for specialist treatments as and when the situation arises in concerned Prisons/Jails.

3. A Medical officer from the nearest Government hospital visits the jail weekly / once a month to provide medical services, where there is no hospital facility. Most of the jails are provided with ambulance. Prisoners are sent to the nearest Government Primary Health Centre, Taluk Hospital, General Hospital and Government Medical College Hospitals for specialist treatments.

4. At the time of emergencies, essential First Aid/medicines will be provided by the doctor in the above Prison hospitals during day time where hospital facilities are available and shifted to nearby higher Government Medical Centres in ambulance/vehicle available at time. During night time, the inmate will be invariably sent to nearby Government Medical Centres within no time. Those inmates sent to above Government Medical Centres will be admitted in Prison cell/ward available. In addition to that above periodic clinical services are being provided to inmates with psychiatric symptoms by the visiting Consultant Psychiatrist from the Government Mental health Centre (MHC) TVM on a weekly basis. Apart from allopathic, Homeopathy Doctor and Ayurvedic Doctor visit the inmates of Central Prisons on a weekly basis. The service of counsellor is also functioning in Central Prisons, Open Prisons, High Security Prison and some Special Sub Jails."

17. A perusal of the same would show that all the jails are well equipped to treat the prisoners and under trial prisoners. Our jails are well equipped to face any casualty to any prisoner. Therefore, simply because a person is sick, no court needs to release the petitioner invoking the first proviso to Section 480(1) of BNSS. The first proviso to Section 480(1) of BNSS is



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applicable in cases in which the Medical Officer attached to the prison concerned, submits a medical report before the court concerned, that the particular prisoner cannot be given medical treatment within their facility. Moreover, in cases in which the prisoner is in a sinking stage where he has to spend his last days with his kith and kin, the court can rely on the first proviso to Section 480(1) of BNSS. In all other cases when a request is submitted for bail on the ground of sickness, the court can allow bail based on that proviso only after getting a report from the Medical Officer of the jail concerned. Moreover, Rule 488 of Kerala Prisons and Correctional Services (Management) Rules, 2014 reads like this:

“488. തടവുകാരന് ഗുരുതരമായ രോഗം ബാധിച്ചാൽ സൂപ്രണ്ട് റിപ്പോർട്ട് ചെയ്യേണ്ടത് സംബന്ധിച്ച്.-

(1) ഒരു വിചാരണ തടവുകാരന് ഗുരുതരമായ രോഗം ബാധിച്ചാൽ അത് സംബന്ധിച്ച മെഡിക്കൽ റിപ്പോർട്ട് ബന്ധപ്പെട്ട കോടതികൾക്ക് സൂപ്രണ്ട് റിപ്പോർട്ട് ചെയ്യേണ്ടതും കോടതിക്ക് യുക്തമെന്ന് തോന്നിയാൽ ജാമ്യത്തിൽ വിടാവുന്നതുമാണ്.

(2) രോഗികളായിട്ടുള്ള വിചാരണ തടവുകാർക്ക് ജയിലിന് അകത്തോ പുറത്തോ ഉള്ള സർക്കാർ ആശുപത്രികളിൽ നിന്നും ആവശ്യമായ ചികിത്സ നൽകേണ്ടതാണ്.

(3) തടവുകാരൻ ജയിലിൽ കഴിയുന്നത് ഒഴിവാക്കുന്നതിനായി രോഗം അഭിനയിക്കുന്നതായി സൂപ്രണ്ടിന് തോന്നിയാൽ അത്തരം കേസുകൾ മെഡിക്കൽ ബോർഡിന്റെ പരിഗണനയ്ക്കായി അയക്കേണ്ടതാണ്.”



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18. From the above provision, it is clear that if an under-trial prisoner becomes seriously ill, a medical report is to be submitted by the Superintendent of the jail. Then only the court can invoke the powers under the first proviso to Section 480(1) of BNSS. Clause (3) of Section 488 of Kerala Prisons and Correctional Services (Management) Rules, 2014 clearly states that, if there is any pretension from a prisoner that there is an illness, a medical board is to be constituted. Therefore, there are procedures to be followed when a prisoner has some illness. The court cannot pass orders mechanically to release an accused relying first proviso to Section 480(1) of BNSS stating that the prisoner is sick. A report is to be obtained from a medical officer of the jail concerned. Similarly, once a person is produced before a court after arrest, he should be sent to jail first in all circumstances except cases in which that person is completely bedridden. In other cases, the court which remands the accused should send the person to the jail and the jail authorities



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including the medical officer concerned of the jail can do the needful as far as the illness is concerned. The courts should make every endeavour to see that the prisoners are in jail and not in hospital during their remand period or when they are undergoing imprisonment. Whether there is any illness or whether there is any expert medical facility is necessary, are all to be decided by the medical officer of the jail and the court need not decide the illness of an under-trial prisoner or prisoner. The court has no expertise in medical jurisprudence. There are rules and procedures, if there is any serious illness to a prisoner which cannot be treated in jail. Therefore, I make it clear that the Court while remanding the accused should send the person directly to the jail in all circumstances except the cases in which he cannot reach up to the jail because of his ailment. This Court issued Circular No.02/2019 on 23.09.2019 fixing guidelines on the procedure to be followed by Judicial Officers during the production of accused by the Police. It will be better to extract the same also:



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"When an accused is produced before a Judicial Officer by Police, it is the duty of the Judicial Officer to ascertain whether the accused has been subjected to torture by the Police. An instance has come to the notice of the High Court that as a result of lack of diligence, injuries inflicted on an accused by the police have escaped the notice of the Judicial Officer.

In the circumstances, all the Judicial Officers in the State are directed to strictly comply with the following directions whenever an accused is produced by police, in addition to the existing guidelines/rules.

1. The Judicial Officer should ask the accused specifically as to whether he was manhandled/ tortured by the police and whether he had any complaint against the police officials, regarding arrest and custodial torture. Vague questions such as, "whether the accused has any complaints" or "whether he has anything to say" are not sufficient. The Judicial Officer shall thereby elicit whether or not the accused has been subjected to torture by the police and record-the same;
2. When the accused is produced with any injury, difficulty or inability, the Judicial Officer shall put specific questions with regard to the nature of injury/ difficulty, how and when it was caused, which will throw light into the nature of the injury. The Judicial Officer should see that the questions asked are probing in nature and not casual. The Judicial Officer shall record the same in a question and answer form;
3. The Judicial Officer shall ascertain whether there is any conflict with regard to the version of the accused and what is stated in the Remand Report and in the Medical Certificate/ Accident Register Cum Wound Certificate;
4. The Judicial Officer, before whom a person in police custody is produced in a physically injured condition, shall seek and understand the details of the injury as provided in Section 50 of the Kerala Police Act;
5. After making enquiry as above, the Judicial Officer shall record his findings specifically on the above points in the remand order;
6. In case the accused produced with bodily injuries/ physical illness is remanded, specific direction shall be issued to the Jail Superintendent concerned to ensure immediate and sufficient medical assistance to the accused forthwith. A report on the action taken on such direction along with medical certificate shall



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be obtained from the Jail Superintendent/ Officer concerned as early as possible, at any rate within 24 hours, without fail;

7. When a Judicial Officer goes to a hospital and remands an accused as provided in Rule 21 of the Criminal Rules of Practice, the Judicial Officer shall address the order to the Superintendent of the jail concerned for the detention of the accused with an instruction to make arrangements for the safe custody of the accused and for his removal to the jail on the discharge from the hospital;

8. No Judicial Officer shall use police vehicles for travel in connection with his private or official purposes;

The above directions shall be followed scrupulously. Any violation of these directions will be viewed seriously."

19. The courts should scrupulously follow the above Circular No.02/2019 also.

20. In **Mahendra Manilal Shah and etc. v. Rashmikant Mansukhlal Shah & Anr.** [2009 SCC OnLine Bombay 2095], the Bombay High Court observed like this:

"50. As observed in the various judgments cited above, the mere admission of an accused to a hospital for medical treatment does not entitle an accused to obtain bail under the proviso to Section 437(1) Cr. P.C. In fact, as observed earlier the said proviso cannot be resorted to in all cases of sickness. The Court must assess the nature of the sickness and whether the sickness can be treated whilst in custody or in government hospitals. The Court should also be satisfied that a case is made out by the Respondent Accused by himself or through



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the doctors attending to him that the treatment required to be administered to the Respondent Accused, considering the nature of his ailment cannot be adequately or efficiently be administered in the hospital in which he is at present and that he needs a better equipped or a speciality hospital. No such case inquiries are made or such a case made out in the present bail application. In the present case as set out earlier, even the basic inquiry as to the nature of sickness is not made prior to the grant of bail, more so when the Bail Application was also silent on this aspect. In the absence of any such material before the Ld. Magistrate, he ought not to have granted bail to the accused u/s. 437(1) proviso only on the ground that admittedly the accused is under medical treatment. If such orders are allowed to be passed it would open floodgates for such applications to be made in serious non-bailable cases, only on the pretext of the accused being on medical treatment. In my view the Ld. Magistrate by granting bail to the accused only on the ground of him being under medical treatment at the hospital exhibits a totally casual approach in granting bail to an accused u/s. 437(1) proviso which is a discretionary power required to be exercised in a judicial manner and on well-settled judicial principles. Also in my view the Ld. Magistrate by not taking into account the relevant circumstances like the nature of sickness, the medical facilities/treatment available at the existing hospital, etc. and by granting bail only on the ground of the Respondent Accused taking medical treatment in hospital amounts to granting of bail under Section 437(1) proviso under irrelevant circumstances.



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51. I do not agree with the submissions of the Ld. Advocate appearing for the Respondent Accused that the I.O. or the P.P. having admitted the sickness of the Respondent Accused the Magistrate was not required to call for any further reports but grant the bail as prayed for. Except for the fact that the Respondent Accused is taking medical treatment in J.J. Hospital and according to the doctors certain tests have to be carried on the Respondent Accused, the I.O. or the A.R.R. have not admitted anything qua the sickness of the Respondent Accused. In any event, they not being equipped with requisite medical knowledge, their admission or denial as regard the sickness of the Respondent Accused should bear very limited relevance in deciding the Bail Application on that ground. In my view a substantial burden is on the Court to satisfy itself qua the sickness of the accused by taking competent assistance available in the field before exercising its powers under section 437(1) proviso Cr. P.C.”

21. In **V.N. Ghiya v. State of Rajasthan** [2008 KHC 5848], the Rajasthan High Court observed like this:

“14. The dispute is whether the petitioner is entitled to be examined by the doctor of his own choice at his own expenses. The respondents were and are prepared to allow the petitioner to be treated in SMS Hospital, Jaipur in the judicial custody but the accused has refused for operation of hernia and filed the present writ petition for treatment from



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the doctor of his own choice at his own expenses.

15. In the aforesaid judgments of Supreme Court cited by the counsel for the petitioner, it is clear that reasonable restrictions are permitted in the case of undertrial prisoners and convicts on exercise of their fundamental right of life guaranteed under Art.21 of the Constitution of India. Hence, they cannot be treated at par with the citizens who are outside the jail. The basic difference is of freedom available to undertrial prisoners / convict and the citizen who is outside the jail in exercise of the said fundamental right guaranteed under Art.21 of the Constitution of India. The citizens are entitled for protection of fundamental right guaranteed under Art.21 of the Constitution of India subject to the reasonable restriction by State by taking resort to regulate the same, therefore, the contention / concession made by the counsel for State to allow the petitioner for treatment after Court hours at his own expenses is not accepted, being contrary to the aforesaid restriction in exercise of fundamental right under Art.21 of the Constitution of India by an undertrial prisoners as held by Supreme Court in aforesaid judgments. Nevertheless the right to life under Art.21 of the Constitution of India is subject to the above restriction available to the petitioner even if there is no provision in the jail manual.

16. From the practice prevailing for medical examination of the prisoners / convicts, the convict/prisoners are to be first examined by the jail doctor and they further act as per the advise of the jail doctor. The petitioner was examined by the



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jail doctor and further services of specialized Government doctors of SMS Hospital were taken. The SMS Hospital is attached with Medical College since last more than 50 years and the doctors of SMS have earned name and the Awards at National as well as International level as would be evident from the documents submitted by counsel for the respondents. Thus the SMS Hospital is the reputed and biggest Referral Hospital in Rajasthan. The concession made by the counsel for the State that the treatment of petitioner by the doctor of his own choice at his own cost after Court hours and after completion of the prosecution witness is not justified on account of availability of proper treatment, therefore, there appears to be no reason for not taking treatment which is available in SMS Hospital.”

22. The Orissa High Court in **State v. Gadadhar Baral**

[1989 KHC 1283] observed like this:

“7. Sickness is a ground to release the accused in a non - bailable offence on bail as provided in S.437(1) proviso of the Cr. P.C. However any nature of sickness would not entitle an accused for release on bail. It should be of such nature that unless the accused is released, he cannot get proper treatment for his cure from the ailment. Unless this interpretation is given, the legislative purpose behind a non-bailable offence shall be frustrated. The proviso is based on humanitarian grounds merely because a person is detained in custody being accused of a non-bailable offence, the same should not be a



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ground for his physical suffering when in our jurisprudence an accused is presumed to be innocent until proved to be guilty. Therefore, the sovereign power shall have to make all arrangements for medical treatment of an accused in custody. Where red tapism or lack of alertness causes delay to afford the required treatment to an accused in custody. Court can consider to release him on bail. In such cases Courts should make adequate enquiry before releasing the accused on bail. Whether an accused would be released on bail would depend upon facts and circumstances of each case."

23. In **Sangappa v. State of Karnataka** [1978 KHC 994] the Karnataka High Court observed like this:

"21. Admittedly, the petitioner was admitted to the District Hospital at Bidar for treatment. The opinion of the doctor is that the petitioner' should be treated in a big institution like District Hospital or Medical College Hospital. His report does not reveal that the District Hospital at Bidar does not have the facilities or expertise to treat the petitioner for his ailment. The diseases of diabetes and blood pressure, now a days, are common diseases. It is seen from the order of the lower court that a submission was made on behalf of the State that in the District Hospital at Bidar, there are post-graduate surgeons and post-graduate doctors in medicine. Further, the District Hospital at Bidar is a well-equipped hospital with all amenities for treating the disease of diabetes and blood - pressure. No



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contra statement was made at the time of argument on behalf of the accused before the court below. Thus, it cannot be said that there are no proper facilities in the District Hospital at Bidar for treating the illness of the petitioner. In fact, he has been admitted to the said hospital and he is treated there. It is not the case of the petitioner that the jail authorities, in whose custody he is at present, have neglected to provide necessary medical aid to him. On the other hand, they have taken prompt action in getting the petitioner admitted to the District Hospital at Bidar for treatment. It is not every sickness or infirmity that entitles a person to be enlarged on bail. The nature and seriousness of the sickness or infirmity, the suitability or otherwise of the remand to jail custody and the availability of the necessary medical treatment and reasonable amenities have to be taken into consideration along with other circumstances before granting bail on the ground of illness. On the basis of the material available in the case, I do not see that the illness of the petitioner is such that he is entitled for bail only on that ground in the circumstances of the case."

24. In **State v. Sardool Singh and another** [1975 SCC OnLine J & K 27], the Jammu and Kashmir High Court observed this:

"5. I now proceed to the consideration of the second contention of Mr. Sethi regarding the standard for determining



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the sickness of an accused person. On a true construction of the proviso to sub-section (1) of S. 497 of the Code of Criminal Procedure, it appears to me that it is not every sickness that entitles an accused person to the grant of bail. The sickness contemplated by the proviso is a sickness which involves a risk or danger to the life of the accused person. I am fortified in this view by a decision of the Hyderabad High Court reported as AIR 1952 Hyd 30 : (1952 Cri LJ 873).

6. In the instant case although the Medical Board has, no doubt, stated that Bhagwan Singh respondent is a patient of epilepsy it has categorically opined that his continuance in Jail under medical treatment will not be harmful to his health. I am, therefore, of the view that the sickness from which Bhagwan Singh respondent is suffering is not of the kind envisaged by the aforesaid provision of law. "

25. I am in perfect agreement with the above dictum laid down by the Bombay, Karnataka, Jammu & Kashmir, Orissa and Rajasthan High Courts. The court must assess the sickness of the convict/under-trial prisoner and then decide whether the sickness can be treated in custody or in the Government Hospital before deciding a bail application based on the first proviso to Section 480(1) of BNSS. As observed by the



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Rajasthan High Court in **V.N Ghiya's Case** (Supra), the citizens are entitled to the protection of fundamental rights guaranteed under Article 21 of the Constitution of India, subject to reasonable restriction by the State by taking resort to regulate the same. Therefore, a prisoner is not entitled to be examined by a doctor of his own choice at his own expense. Even though the right to life is a fundamental right, there are reasonable restrictions permitted in the case of under-trial prisoners and convicts on the exercise of their fundamental rights under Article 21 of the Constitution of India. They cannot be treated at par with the other citizens, who are outside the jail. An under-trial prisoner/convict cannot choose a hospital and pick a luxury room, which is available in almost all private hospitals for their treatment. Unless the jail authorities state that the medical facility available in jail is not enough for the convicts/under-trial prisoners, no convict or under-trial prisoner is entitled to bail based on the first proviso to Section 480(1) of BNSS. The person accused of criminal offences should know that they are



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going to jail and not for medical tourism. There may be some limitations in getting the ambience of a luxury hospital in jail. But, the treatment facilities will be there in the jail. Therefore, if any bail application based on the first proviso to Section 480(1) of BNSS is filed, the court should be very careful and unless a report from the jail doctors is received, saying that there is no facility for treatment in jail for a particular illness, the court need not entertain the same. Similarly, jail doctors should give all facilities available for medical treatment within the four corners of the law, rules, circulars etc in this regard.

26. Coming back to the case, to assess the medical condition of the petitioner, this Court directed the Public prosecutor to get a medical report. The Public Prosecutor submitted that the petitioner is now in jail and the medical facilities are available in the jail and necessary follow-up treatment is given to the petitioner. If that is the case, the petitioner is not entitled to bail based on the first proviso to Section 480(1) of BNSS.



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In light of the above discussion, the petitioner is not entitled to bail at this stage. The Investigating Officers in the cases will try to record the arrest of the petitioner in all cases in which he is implicated as an accused, as expeditiously as possible, the Investigating Officer may take steps to get custody of the petitioner if necessary. After recording the arrest and custody period is over, the petitioner is free to file a fresh bail application before the Jurisdictional Court.

The upshot of the above discussion is that the petitioner is not entitled to bail at this stage. Hence this bail application is dismissed.

sd/-
P.V.KUNHIKRISHNAN
JUDGE

SKS/DM/invj/AMR