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**(2025) 01 KL CK 0099**

**High Court Of Kerala**

**Case No:** Bail Application Nos .655 & 654 Of 2025

P.K Jacob @ Benny

APPELLANT

Vs

Kerala State Of Kerala

RESPONDENT

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**Date of Decision:** Jan. 21, 2025

**Acts Referred:**

- Constitution of India, 1950 - Article 21
- Bharatiya Nagarik Suraksha Samhita, 2023 - Section 483

**Hon'ble Judges:** P.V.Kunhikrishnan, J

**Bench:** Single Bench

**Advocate:** P.K.Varghese, Jerry Mathew, Justin K.K., Devika K.R., G Sudheer

**Final Decision:** Allowed

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### **Judgement**

P.V.Kunhikrishnan, J.

1. These Bail Applications, filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, are connected because the same petitioner filed these

cases and the allegations are also almost same.

2. Petitioner is the accused in Crime No.1232/2024 of Chalakkudy Police Station and Crime No.889/2024 of Aloor Police Station.

3. The allegation in Crime No.1232/2024 of Chalakkudy Police Station is that while the petitioner was teaching karate to the victim, he behaved

improperly to the victim girl aged 14 years and grabbed the breast of the victim while training her. The allegation in Crime No.889/2024 of Aloor

Police Station is that the petitioner who is the teacher of the victim, a minor girl aged 14 years, with sexual intent dragged the right hand of the victim

and touched the buttocks and private parts at the school auditorium. The petitioner was arrested in Crime No.889/2024 of Aloor Police Station on

09.11.2024 and thereafter his arrest was recorded in Crime No.1232/2024 of Chalakkudy Police Station on 21.11.2024. The petitioner is in custody for about 70 days.

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

5. It is true that the allegation against the petitioner is very serious and the petitioner as a teacher abused his own students who are minor girls. The

petitioner is in custody for about 70 days. Indefinite incarceration of the petitioner is not necessary. Moreover, the maximum punishment that can

imposed for the offences alleged against the petitioner in these cases are below seven years.

6. 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.

7. 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.â€ (underline supplied)

8. In *Manish Sisodia v. Directorate of Enforcement* [2024 KHC 6426], also the Hon'ble Supreme Court observed that:

â€œ53. 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"".â€

9. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, these Bail Applications are 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.

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 the jurisdictional court to cancel the bail, if there is any violation of the above conditions.