

Manikandan Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Feb. 3, 2025

Acts Referred: Bharatiya Nagarik Suraksha Samhita, 2023 " Section 109, 483
Bharatiya Nyaya Sanhita, 2023 " Section 3(5), 109(1), 115(2), 118(1), 126(2)

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

Bench: Single Bench

Advocate: V.A.Vinod, Suhail M, Shakthi Prakash

Final Decision: Allowed

Judgement

P.V.Kunhikrishnan, J

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

2. Petitioners are the accused in Crime No.55 of 2025 of Vadakkekad Police Station, Thrissur District, registered alleging offences punishable under

Sections 126(2), 115(2), 118(1), 109(1) r/w Section 3(5) of the Bharatiya Nyaya Sanhita.

3. The prosecution case as stated in Annexure A2 order is extracted hereunder:

“There was a dispute between the defacto complainant and the accused persons 1 and 2 on 22.01.2025 at 00.30 hours and due to that enmity the second

accused bit at his right thumb and at left palm and the accused further kicked the defacto complainant. When the accused persons were questioned with respect to

this assault, there occurred a scuffle between them and the first accused and the first accused cut at the left side of the head of the defacto complainant and he

sustained grievous injuries at his head. When the accused cut the defacto complainant with more strength, it would have resulted to his death. By committing the

aforesaid offences, the accused persons are alleged to have committed the above mentioned offences.”

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

5. The learned counsel for the petitioners submitted that petitioners are in custody from 22.01.2025 onwards. The learned counsel for the petitioners

submitted that the petitioners are willing to abide by any conditions that may be imposed by this Court. It was also submitted that the defacto

complainant is the brother of the 2nd petitioner and the defacto complainant has no grievance now and the matter is also settled.

6. Annexure A3 is the affidavit filed by the defacto complainant.

7. The learned Public Prosecutor opposed the bail application.

8. This Court considered the contention of the learned counsel for the petitioners and the learned Public Prosecutor. Simply because the defacto

complainant has no grievance against the petitioners, this Court cannot grant bail in a case in which the offence under Section 109 BNSS is alleged.

But the petitioner is in custody from 22.01.2025.

9. 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.

6. 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)

7. 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".

8. 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. Petitioners 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 Petitioners shall appear before the Investigating Officer for interrogation as and when required. The Petitioners 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 them from disclosing such facts to the Court or to any police officer.

3. Petitioners shall not leave India without permission of the jurisdictional Court.

4. Petitioners shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are

suspected.

5. If any of the above conditions are violated by the petitioners , 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.