



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946

BAIL APPL. NO. 17 OF 2025

AGAINST THE ORDER/JUDGMENT DATED IN CR NO.1889 OF 2024
OF CHIEF JUDICIAL MAGISTRATE ,KOTTAYAM

PETITIONER(S) /ACCUSED:

SREEKUMAR A.V.,
AGED 59 YEARS
SON OF LATE MADHAVA WARRIER, DC BOOKS, KOTTAYAM,
MUTTAMBALAM VILLAGE, KOTAYAM, KERALA, INDIA,
RESIDING AT KARTHIKA, ILLAMPILLIL, VELOOR P.O.,
KOTTAYAM DISTRICT, PIN - 686003

BY ADVS.
T.RAMPRASAD UNNI
K.RAMAKUMAR (SR.)
S.M.PRASANTH
SHEHIN S.
DEVIKA S.
RESHMA DAS P.

RESPONDENT(S) /STATE AND COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031
- 2 THE STATION HOUSE OFFICER,
KOTTAYAM EAST POLICE STATION, COLLECTORATE P.O.,
KOTTAYAM, KOTTAYAM DISTRICT, KERALA, PIN - 686002



BY ADV.

SRI.NOUSHAD K.A-SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
06.01.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



P.V.KUNHIKRISHNAN, J

B.A.No.17 of 2025

Dated this the 06th day of January, 2025

O R D E R

This Bail Application is filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita.

2. Petitioner is an accused in Crime No.1889 of 2024 of Kottayam East Police Station, Kottayam. The above case is registered against the petitioner alleging offences punishable under Section 72 of the Information Technology Act, 2000 and Sections 316(2) and 318(2) of the Bharatiya Nyaya Sanhitha, 2023.

3. According to the petitioner, he is an employee of DC Books, Kottayam and he is functioning as Senior Deputy Editor. According to the petitioner, his responsibility is to discharge functions that are entrusted to him by his employer. It is the case of the petitioner that, one Sri. Raghunath, Bureau Chief of the



Deshabhimani Daily, Kannur Edition, had sent through the e-mail of DC Books, the matter and material for a book to be published by DC Books relating to the experiences and memories of Sri. E. P. Jayarajan, a prominent leader of the Communist Party of India (Marxist) and a member of its Central Committee and State Secretariat. He was also the convener of the Left Democratic Front. It is the case of the petitioner that, he put up the same before the editorial board for publication. Initially, chapters 1 to 7 were furnished to the publisher followed by other portions and photographs till 02.11.2024. As a functionary of DC Books, the petitioner was entrusted to take steps for publication of the book. According to the petitioner, the editorial board gave a title to the book in Malayalam "Kattan Chayayum Parippuvadayum - Oru Communistinte Jeevitham". It is also submitted that the petitioner has no direct involvement in the case.

4. The prosecution case is that the defacto complainant, who is the Central Committee member of the Communist Party of India (Marxist) and the State Secretariat member of the said party, was humiliated by the accused in the above case. According



to the defacto complainant, he never gave any consent to the DC Books for publishing his autobiography. It is the definite case of the defacto complainant that the DC Books published a notice fixing the date of release of the book without any agreement with the defacto complainant. It is also submitted that a heading to the book is also decided by the DC Books without the consent of the writer.

5. Heard Adv.K. Ramkumar, the learned Senior Counsel assisted by his retaining counsel appearing for the petitioner and the learned Public Prosecutor.

6. I am surprised to see that DC Books, one of the establishments that released several Malayalam books, published such a notice without the consent of the writer. This Court put a question to the Senior Counsel whether any consent was obtained from the writer of the book for publishing such a notice. The learned Senior Counsel submitted that the petitioner is not responsible, but there is nothing to show that such a consent was given by the writer of the book. That itself shows the seriousness of the case. Without getting the permission of the writer, the



release date of a book is published and a title to the book is also decided by the editorial committee of the DC Books. I am of the *prima facie* opinion that the offence alleged are made out. The learned Senior Counsel submitted that the petitioner is not involved in this case and he is only an employee. There are others to be implicated. That is a matter to be investigated by the Investigating Officer. I do not want to make any observation about the same. The investigation is at the preliminary stage and the investigation can go on. The Investigating Officer is free to investigate the matter and can implicate the persons who are responsible for the same.

7. Coming back to the question of bail to the petitioner, the first offence alleged is under Section 72 of the IT Act. The maximum sentence that can be imposed is two years. The other offence alleged against the petitioner is under Section 316(2) of the BNS. The maximum punishment that can be imposed is five years. The offence under Section 318(2) of the BNS is also alleged. There also, the maximum punishment that can be imposed is three years. The Apex Court in **Arnesh Kumar v.**



State of Bihar and Another [2014 (8) SCC 273] observed that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, can not be arrested by the police officer only on his satisfaction that such person had committed offence punishable as aforesaid. It will be better to extract the relevant portion of the above judgment:

"7. xxxxxxxxx

7.1. From a plain reading of the aforesaid provision, it is evident that all person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case, or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court



or the police officer, or unless such accused person is arrested, his conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes, envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC."

In the light of the above principle, the arrest of the petitioner may not be necessary. Therefore, I am forced to grant bail to the



petitioner, ofcourse reluctantly.

8. The Public Prosecutor seriously opposed the bail application stating that the custodial interrogation of the petitioner is necessary. It is also submitted that, media persons are also to be questioned.

9. I do not think that the media is responsible for this publication, especially because the DC Books itself published a notice in their website stating that the book will be released on a particular date and the said news is carried out by the media. Therefore, there is no offence made out against the media. Hence, considering the facts and circumstances of the case, I think the petitioner can be release on bail in the light of the grounds mentioned above.

10. 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.

11. Recently the Apex Court in **Siddharth v. State of Uttar Pradesh and Another [2021(5)KHC 353]** considered the point in detail. The relevant paragraph of the above judgment is extracted hereunder:

"12. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. (Joginder Kumar v. State of UP and Others (1994 KHC 189: (1994) 4 SCC 260: 1994 (1) KLT 919: 1994 (2) KLJ 97: AIR 1994 SC 1349: 1994 CriLJ 1981)) If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey



summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.”

12. In **Manish Sisodia v. Central Bureau of Investigation [2023 KHC 6961]**, the Apex Court observed that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case.

13. 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. The petitioner shall appear before the Investigating Officer within two weeks from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose to arrest the petitioner, he shall be released on bail on executing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent



sureties each for the like sum to the satisfaction of the arresting officer concerned.

3. 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 from disclosing such facts to the Court or to any police officer.

4. Petitioner shall not leave India without permission of the jurisdictional Court.

5. 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 any of the above conditions are violated.

Sd/-

P.V.KUNHIKRISHNAN, JUDGE

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