



2025:KER:66624

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 9TH DAY OF SEPTEMBER 2025 / 18TH BHADRA, 1947

BAIL APPL. NO. 6102 OF 2025

CRIME NO.6/2024 OF ENFORCEMENT DIRECTORATE KOCHI, ERNAKULAM

AGAINST THE ORDER DATED 11.04.2025 IN CMP NO.60 OF 2025 OF

SPECIAL CCOURT FOR PMLA CASES, ERNAKULAM

PETITIONER/ACCUSED NO.3:

ANTO PAUL PRAKASH
AGED 32 YEARS, S/O. WILLIAMS,
NO.3/69C, METTU STREET,
ALANDHUR, KANCHIPURAM,
TAMILNADU, PIN - 600016

BY ADVS.
SRI.A. MOHAMMED
SRI.K.I.SAGEER
SRI.MUHAMMED YASIL

RESPONDENT/COMPLAINANT:

DIRECTORATE OF ENFORCEMENT
REPRESENTED BY SHEKHAR KUMAR,
ASSISTANT DIRECTOR, KOCHI ZONAL OFFICE,
KANOOS CASTLE, A.K. SHESHADRI ROAD,
COCHIN ZONE, KOCHI, PIN - 682011

BY SRI.JAISHANKAR V.NAIR, SC, ENFORCEMENT DIRECTORATE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
23.08.2025, THE COURT ON 09.09.2025 PASSED THE FOLLOWING:



BECHU KURIAN THOMAS, J.

B.A. No.6102 of 2025

Dated this the 9th day of September, 2025

ORDER

This bail application is filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS').

2. Petitioner is the third accused in ECIR/KCZO/06/2024 of the Enforcement Directorate, Kochi registered alleging offences punishable under sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (for short 'the PMLA')

3. The prosecution alleges that advertisements of various illegal Chinese loan applications were circulated in social media platforms to attract the general public as customers and after these applications were installed in the mobile phones of those customers, crucial data from their mobile phones, including contacts, photographs, files et cetera, were retrieved, which were used to extort money through various methods by using mule accounts of people based in Kerala which were later siphoned off and thereby committed the offences under section 420 IPC which in turn is a scheduled offence under part A of PMLA. Petitioner was arrested on 30.01.2025 and he has



been in custody since then.

4. Sri. A Mohammed, the learned counsel for the petitioner submitted that the petitioner was arrested without communicating to him the grounds for his arrest and also that the grounds for arrest were not communicated to his relatives as well. The learned Counsel also submitted that the learned Sessions Judge failed to properly advert to the said contention and only made a passing reference that the grounds for arrest were communicated.

5. Sri. Jaishankar V. Nair, the learned Standing Counsel for the respondent opposed the bail application and submitted that the grounds for arrest were communicated to the petitioner and also to a near relative at the time of his arrest. It was also submitted that since the offence alleged was under the PMLA, the rigour under section 45 of the said Act will apply and hence petitioner ought not to be released on bail. It was also argued that the grounds for arrest were not required to be communicated to the near relatives, especially considering the date of arrest which was much prior to the date of the decision of the Supreme Court, which declared that such grounds must be communicated.

6. Though prima facie there are materials on record to connect the petitioner with the crime, since it was contended that there was a failure to communicate the grounds for his arrest, this Court is obliged to consider the



said issue.

7. In the decisions in **Pankaj Bansal v. Union of India and Others**, [(2024) 7 SCC 576], **Prabir Purkayastha v. State (NCT of Delhi)** [(2024) 8 SCC 254] and **Vihaan Kumar v. State of Haryana and Another** (2025) 5 SCC 799, it has been held that the requirement of informing a person of grounds for arrest is a mandatory requirement of Article 22(1) and also that the information of the grounds for arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds must be communicated to the arrested person effectively in the language which he understands. It has also been observed that the grounds for arrest must be communicated to the near relatives as well.

8. After analyzing various decisions, the Supreme Court had, in **Kasireddy Upender Reddy v. State of Andhra Pradesh** [2025 INSC 768] culled out the following principles of law:

“a) The requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional condition.

b) Once a person is arrested, his right to liberty under Art.21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested.

c) The mode of conveying the information of the grounds of arrest must be meaningful so as to serve the true object underlying Art.22(1).



2025:KER:66624

d) If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Art.22(1).

e) On the failure to comply with the requirement of informing the grounds of arrest as soon as may be after the arrest, the arrest would stand vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

f) If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed.

g) When an arrestee pleads before a court that the grounds of arrest were not communicated, the burden to prove the compliance of Art.22(1) is on the police authorities.

h) The grounds of arrest should not only be provided to the arrestee but also to his family members and relatives so that necessary arrangements are made to secure the release of the person arrested at the earliest possible opportunity so as to make the mandate of Art.22(1) meaningful and effective, failing which, such arrest may be rendered illegal.”

9. In a recent decision in **Shahina v. State of Kerala** (2025 KHC OnLine 706), this Court had considered the impact of the aforesaid principles in relation to offences alleged under the NDPS Act and held that the grounds for arrest must be communicated not only to the arrestee but also to the near relatives as well. The statutory provisions under the NDPS Act and the PMLA has similar provisions in relation to the grant of bail.

10. With the above principles in mind, when the circumstances in the



2025:KER:66624

instant case are appreciated, it can be seen that the arrest memo does not refer to any grounds for arrest. However, a separate written grounds for arrest has been furnished to the arrestee and he has even acknowledged receipt of the grounds for arrest. Though the learned counsel for the petitioner pointed out inconsistencies in the acknowledgement of the grounds for arrest, it is noticed from Annexure R1(b) that the petitioner has specifically endorsed in writing that he has 'received the grounds of arrest' and the time is also written as '22:11 hours on 30-01-2025'. Hence this Court is satisfied that the grounds for arrest were communicated to the arrestee.

11. However, the legal propositions laid down by the Supreme Court mandates that the grounds for arrest must be communicated not only to the arrestee, but also to the near relatives, as soon as possible. On a perusal of the documents produced by the respondent as well as the petitioner, it is noticed that the respondent failed to communicate the grounds for arrest to any near relative or even a friend of the petitioner. Though it was contended that materials are available to indicate that the arrest was informed to the near relatives, it needs to be borne in mind that there is a difference between intimation of the arrest and communication of the grounds for arrest. There are no materials produced to indicate that the grounds for arresting the petitioner were informed or communicated to a near relative or any friend of the petitioner.



12. Faced with such a situation, the learned counsel for the respondent submitted that the decision in **Vihaan Kumar** (supra) was rendered only on 07-02-2025 while the petitioner was arrested on 30-01 2025 and hence the said principle has no application in the instant case. Though the said contention of the learned counsel for the respondent was impressive on first blush, on a deeper analysis, it is evident that a judgment of the Supreme Court will always be retrospective in nature unless the judgment itself specifically states that it will operate only prospectively. Reference to the decision in **Kanishk Sinha v. State of West Bengal** [2025 INSC 278] is relevant. In the said decision, it was reiterated as follows: “.....*Now the law of prospective and retrospective operation is absolutely clear. Whereas a law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court, or law as it is interpreted by the Court. The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively.....*”

13. In view of the above propositions of law, it is evident that the grounds for arrest ought to have been communicated to the near relative of the arrestee also. Since the grounds for arrest were not communicated to the near relatives of the petitioner soon after his arrest, petitioner is entitled to be



2025:KER:66624

released on bail.

In the result, this application is allowed on the following conditions:-

- (a) Petitioner shall be released on bail on him executing a bond for Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties each for the like sum to the satisfaction of the court having jurisdiction.
- (b) Petitioner shall co-operate with the trial of the case.
- (c) Petitioner shall not intimidate or attempt to influence the witnesses; nor shall he attempt to tamper with the evidence.
- (d) Petitioner shall not commit any similar offences while he is on bail.
- (e) Petitioner shall not leave the State of Kerala without the permission of the jurisdictional Court.

In case of violation of any of the above conditions or if any modification or deletion of the conditions are required, the jurisdictional Court shall be empowered to consider such applications if any, and pass appropriate orders in accordance with law, notwithstanding the bail having been granted by this Court.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps



2025:KER:66624

APPENDIX OF BAIL APPL. 6102/2025

PETITIONER'S/S' ANNEXURES

Annexure A2 **A TRUE COPY OF THE ARREST MEMO DATED
30.01.2025**

RESPONDENT'S/S' ANNEXURES

Annexure R1 (a) **A TRUE COPY OF THE ARREST MEMO DATED
30.01.2025 ISSUED AGAINST ACCUSED NO.3/BAIL
PETITIONER AS EXTRACTED FROM THE RUDS (RELIED
UPON DOCUMENTS) SERVED**

Annexure R1 (b) **A TRUE COPY OF THE GROUNDS OF ARREST DATED
30.01.2025 SERVED ON ACCUSED NO.3/BAIL
PETITIONER AS EXTRACTED FROM THE RUDS (RELIED
UPON DOCUMENTS)**