

# Vijayan.K.K vs State Of Kerala on 10 January, 2025

**Author: P.V.Kunhikrishnan**

**Bench: P.V.Kunhikrishnan**

2025:KER:1858

BAIL APPL. NO. 10966 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 10TH DAY OF JANUARY 2025 / 20TH POUSHA, 1946

BAIL APPL. NO. 10966 OF 2024

CRIME NO.760/2024 OF Vellarikundu Police Station, Kasargod

PETITIONERS/ACCUSED 1 TO 5:

- 1 VIJAYAN.K.K  
AGED 62 YEARS  
S/O. KRISHNAN, KALLEPURAYIDATHIL HOUSE,  
PUNGAMCHAL, PUNNAKUNNU (P.O), MALOTH,  
KASARAGOD DISTRICT., PIN - 671533
- 2 VIJEETH.K.V  
AGED 35 YEARS  
S/O. VIJAYAN.K.K, KALLEPURAYIDATHIL HOUSE,  
PUNGAMCHAL, WEST ELERI, MALOTH,  
KASARAGOD DISTRICT., PIN - 671533
- 3 GEORGE  
AGED 66 YEARS  
S/O. THOMAS, KOTTUR, VALLIKOCHI, ELERITHATTU,  
WEST ELERI, KASARAGOD DISTRICT., PIN - 671314
- 4 SIJO.K.G  
AGED 40 YEARS  
S/O. GEORGE, KOTTOOR HOUSE, WEST ELERI,  
ELERITHATTU, KASARAGOD DISTRICT, PIN - 671314
- 5 K.K. HARIDAS  
AGED 58 YEARS  
S/O. K.I. KRISHNAN, KALLEPURAYIDATHIL,

PUNGAMCHAL, PUNNAKUNNU(P.O), WEST ELERI,  
PLACHIKKARA, KASARAGOD DISTRICT., PIN - 671533

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BY ADV NIREESH MATHEW

RESPONDENT/S:

STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, KOCHI.,  
PIN - 682031

SRI G SUDHEER, PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
10.01.2025, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

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P.V.KUNHIKRISHNAN, J.

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B.A.No.10966 of 2024

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Dated this the 10th day of January, 2025

ORDER

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

2. Petitioners are the accused in Crime No.760/2024 of Vellarikundu Police Station. The above case is registered against the petitioners alleging offences punishable under Sections 189(2) 191(2)(3), 115(2), 118(1), 74, 110, 296(b) and 190 of the Bhartiya Nyaya Sanhita, 2023 (for short, BNS).

3. The prosecution case is that, on 14.12.2024 at 11.15 AM, the accused persons tried to unload the metal rocks from the lorry for the purpose of concreting the road which is in dispute. It is alleged that while the defacto complainant and her siblings tried to restrain them, accused Nos.1 to 5 using iron rods and wooden sticks unlawfully assembled and the 1 st accused verbally abused the defacto complainant and by 2025:KER:1858 BAIL APPL. NO. 10966 OF 2024 catching hold of her hair

assaulted on her head with the iron rod to which she defended or else, the same would have resulted even in her death. It is further alleged that the 2<sup>nd</sup> accused caught hold on the breast of the defacto complainant thereby outraging her modesty and accused Nos.3 and 4 used iron rod and wooden stick and the 5<sup>th</sup> accused used his hand to assault the siblings of the defacto complainant. Hence it is alleged that the accused have committed the offences.

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

5. The counsel for the petitioners submitted that even if the entire allegations are accepted, no offence under Section 110 of BNS is attracted. The counsel submitted that the other non-bailable offence is under Section 118(1) of BNS. Only minor injury is sustained to the victim. It is also submitted that Section 74 of BNS is also not attracted because even if the prosecution case is accepted, the intention of the accused is not to outrage the modesty, but to attack the defacto complainant. The Public Prosecutor opposed the bail application and submitted that the injured lady sustained injury.

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6. This Court considered the contentions of the petitioners and the Public Prosecutor. Admittedly the injury sustained to the victim is only an abrasion of thigh and forearm. Whether an offence under Section 110 of BNS is attracted in the facts and circumstances of the case is a point to be decided during the investigation and by the trial court if final report filed. Similarly whether Section 74 of BNS is attracted is also to be investigated by the Investigating Officer. But the same can be proved by the prosecution through oral evidence. Custodial interrogation of the petitioners is not necessary.

7. 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.

8. Recently the Apex Court in *Siddharth v State of Uttar Pradesh and Another* [2021(5)KHC 353] 2025:KER:1858 BAIL APPL. NO. 10966 OF 2024 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 2025:KER:1858 BAIL APPL. NO. 10966 OF 2024 investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

9. 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.

10. 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 petitioners 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 petitioners, they shall be released on bail on executing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent 2025:KER:1858 BAIL APPL. NO. 10966 OF 2024 sureties each for the like sum to the satisfaction of the arresting officer concerned.
3. 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 him from disclosing such facts to the Court or to any police officer.
4. Petitioners shall not leave India without permission of the jurisdictional Court.
5. 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.
6. Needless to mention, it would be well 2025:KER:1858 BAIL APPL. NO. 10966 OF 2024 within the powers of the investigating officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioners even while the petitioners are on bail as laid down by the Hon'ble Supreme Court in *Sushila Aggarwal v. State (NCT of Delhi)* and another [2020 (1) KHC 663].
7. 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 any of the above conditions are violated.

sd/-

JV

P . V . KUNHIKRISHNAN  
JUDGE