

Davis P R vs State Of Kerala on 5 February, 2025

Author: P.V.Kunhikrishnan

Bench: P.V.Kunhikrishnan

2025:KER:9541

Bail Appl. Nos.427 & 831 of 2025

1

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 5TH DAY OF FEBRUARY 2025 / 16TH MAGHA, 1946

BAIL APPL. NO. 427 OF 2025

CRIME NO.36/2025 OF Mala Police Station, Thrissur

PETITIONERS/ACCUSED NOS.1 TO 4:

- 1 DAVIS P R
 AGED 46 YEARS
 PAREKKATT, THIRUMUKKULAM, IRANIKULAM P.O,
 THRISSUR, PIN - 680734
- 2 LINU P V
 AGED 43 YEARS
 S/O VARGHESE, PAREKKADAN, THIRUMUKKULAM,
 IRANIKULAM P.O., THRISSUR, PIN - 680734
- 3 SHIJU
 AGED 44 YEARS
 S/O DEVASSY, CHAMAKKAT VAZHAPPILLY HOUSE,
 IRANIKULAM P.O., NEAR CHURCH THIRUMUKKULAM,
 THRISSUR, PIN - 680734
- 4 LINSON
 AGED 41 YEARS
 S/O VARGHESE, PLAKKAL HOUSE, THIRUMUKKULAM, NEAR
 THIRUMUKKULAM CHURCH, KUZHUR, THRISSUR,

PIN - 680734

2025:KER:9541

Bail Appl. Nos.427 & 831 of 2025

2

BY ADVS. BOBY THOMAS
WINSTON K.V
VIVEK P.C.

RESPONDENTS/STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 2 STATION HOUSE OFFICER
MALA POLICE STATION, THRISSUR RURAL, PIN -
680732

ADDL.R3 ABHILJITH
AGED 29 YEARS
S/O.ANTON, PAREKATTIL HOUSE, THIRUMUKULAM DESOM,
THIRUMUKULAM VILLAGE, THRISSUR RURAL -680734

ADDL.R4 ANTONY
AGED 50 YEARS
PAREKATTIL HOUSE, THIRUMUKULAM DESOM,
THIRUMUKULAM VILLAGE, THRISSUR RURAL -680734

ADDL.R5 AMARJITH
AGED 20 YEARS
PAREKATTIL HOUSE, THIRUMUKULAM DESOM,
THIRUMUKULAM VILLAGE, THRISSUR RURAL -680734

ADDL.R6 KUSUMAM
AGED 45 YEARS
PAREKATTIL HOUSE, THIRUMUKULAM DESOM,
THIRUMUKULAM VILLAGE, THRISSUR RURAL -680734.

ADDL R3 TO ADDL R6 ARE IMPEADED AS PER ORDER
DATED 29.01.2025 IN CRL MA 1/2025 IN BA
427/2025.

BY ADVS.SRI. NOUSHAD K.A., SR.PP
SMT. I.SHEELA DEVI
SRI. BINESH.K.N.

2025:KER:9541

Bail Appl. Nos.427 & 831 of 2025

3

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
05.02.2025, ALONG WITH Bail Appl..831/2025, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:9541

Bail Appl. Nos.427 & 831 of 2025

4

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 5TH DAY OF FEBRUARY 2025 / 16TH MAGHA, 1946

BAIL APPL. NO. 831 OF 2025

CRIME NO.735/2024 OF Ranny Police Station, Pathanamthitta
AGAINST THE ORDER/JUDGMENT DATED 08.01.2025 IN CRMP NO.9216
OF 2024 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - II,
PATHANAMTHITTA / II ADDL.M.A.C.T.

PETITIONER(S)/ACCUSED 1 TO 3:

- 1 SUNIL KUMAR H
 AGED 34 YEARS
 S/O HARIKUMAR, PUTHENVEEDU HOUSE, NEELIPILAVU
 P O, CHITTAR VILLAGE PRESENTLY RESIDING AT
 YAMUNA HOUSE, NARANMMOOZHY P O KADUMEENCHIRA
 ATHIKAYAM VILLAGE, RANNI TALUK, PIN - 689 711
- 2 AKHIL AJI
 AGED 21 YEARS
 S/O AJI T I, OFFICE STAFF YAMUNA MOTORS RANNI,
 THEKKEKARA HOUSE, NARANAMMOOZHY P O, ATHIKAYAM
 VILLAGE, PIN - 689 711
- 3 SANJU BABY KUTTAN
 AGED 30 YEARS
 S/O BABY KUTTAN MYKULATHU HOUSE, CHETHACKAL P O,

CHETHACKAL VILLAGE, RANNY TALUK, PIN - 689 677

BY ADVS. ARUN ASHOK
NEENA JAMES
ANASWARA K.P.

2025:KER:9541

Bail Appl. Nos.427 & 831 of 2025

5

RESPONDENT(S)/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 031
- 2 THE STATION HOUSE OFFICER,
RANNY POLICE STATION, RANNY PO, PATHANAMTHITTA
DISTRICT, KERALA, PIN-689672,
REPRESENTED THROUGH THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA AT ERNAKULAM, PIN - 682 031

BY ADV.
SRI. HRITHWIK C.S., SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
05.02.2025, ALONG WITH Bail Appl..427/2025, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:9541

Bail Appl. Nos.427 & 831 of 2025

6

C.R.

P.V.KUNHIKRISHNAN, J.

B.A.Nos.427 & 831 of 2025

Dated this the 05th day of February, 2025

ORDER

Destruction of property is a form of violence. Nowadays, when criminal offences are committed, there is a tendency to damage the private properties of the victims, like their residential houses,

household items, office items, etc. If a physical hurt is caused, it can be cured on some occasions by medication. But the destruction of property can be compensated only through money. However, the victims in criminal cases have to wait a long time to get compensation. If damages are caused to private properties by the assailants, can a condition be imposed to deposit the damages assessed by the Police as a condition for granting bail, subject to the result of the final decision in the 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 investigation and also by a competent court, is the question to be decided in this case.

2. I will narrate the facts in these bail applications separately. BA No.427/2025 is filed by the accused in Crime No.36/2025 of Mala Police Station, Thrissur District. The above case is registered against the petitioners alleging offences punishable under Sections 126(2), 115(2), 118(1), 110, 333, 324(5) and 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short, BNS). The prosecution case is that, on 04/01/2025 at about 8:30 pm, while the defacto complainant and his brother were standing in front of their house near the shop of his father, accused Nos.1 to 4, who were having enmity with the defacto complainant, assaulted the father of the defacto complainant. When the defacto complainant intervened, the accused assaulted the defacto complainant and his brother Amarjith using their hands. When the defacto complainant, his brother and his father were trying to escape from the place, the accused attacked 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 them using an iron rod and also damaged the glass of the shop attached to the house of the defacto complainant. It is also alleged that several glass vessels and the articles in the shop were damaged. According to the prosecution, they sustained a loss of about Rs. One Lakh. Hence it is alleged that the accused committed the offence.

3. The petitioners in BA No.831/2025 are the accused in Crime No.735/2024 of Ranny Police Station, Pathanamthitta. The above case is registered against the petitioners alleging offences punishable under Sections 296, 333, 118(1), 115(2), 324(5), 189(1), 189(2), 191(2), 191(3) and 190 of BNS. The prosecution case is that the accused, along with two identifiable persons, trespassed into the residence of the first informant on 05/10/2024, at 9.30 pm, and assaulted the defacto complainant, his parents and his brother using a weapon, like an iron rod, damaged two motorcycles and two mobile phones, demolished walls, etc. It is alleged that the defacto complainant sustained a loss of 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 Rs. 3,36,000/-.

4. These bail applications are filed apprehending arrest by the petitioners in Crime No.36/2025 of Mala Police Station and Crime No.735/2024 of Ranny Police Station.

5. As per the prosecution allegation, it is clear that, While committing criminal offences, the petitioners also committed mischief and the offence under Section 324(5) of BNS is also alleged. Section 324 of BNS deals with "mischief". Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief". Section 324(2) of BNS says that whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. Section 324(3) of BNS says that whoever commits mischief and 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 thereby causes loss or

damage to any property including the property of Government or Local Authority shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. Section 324(4) of BNS says that, whoever commits mischief and thereby causes loss or damage to the amount of twenty thousand rupees and more but less than one lakh rupees shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Section 324(5) of BNS says that, whoever commits mischief and thereby causes loss or damage to the amount of one lakh rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. Section 324(6) of BNS says that, whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 either description for a term which may extend to five years, and shall also be liable to fine.

6. It is true that Section 324 of BNS is a bailable offence. But, in the crimes registered in these two bail applications, along with the offence under Section 324(5) of BNS, the offence under Section 333 of BNS is also alleged. Section 333 of BNS is a non-bailable offence. Section 333 of BNS says that, whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

7. Chapter XVII of BNS deals with the offences against property. Section 329 to 333 of BNS deals with Criminal trespass. Criminal trespass and house trespass are defined in Section 329(1) and (2) of BNS respectively. Whoever 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any such person in possession of such property or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit an offence is said to commit criminal trespass as per Section 329(1) BNS. Section 329(2) BNS says that, whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel used as a human dwelling or any building used as a place of worship, or as a place for the custody of property is said to commit house-trespass. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit lurking house-trespass as per Section 330(1) of BNS. Section 330(2) BNS deals with housebreaking.

2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025

8. The question to be decided is when the offences of house trespass which are non-bailable coupled with the offence of serious mischief is committed, whether there can be a direction to deposit the amount of damages for the destruction caused to the property as a condition for granting bail, subject to the investigation in the case and the trial if any, by a court of law. Such a provision is not there in the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

9. While considering the provisions of The Prevention of Damage to Public Property Act, 1984, this Court in Hemachandran M.T. @ Kamalesh and Others v. Sub Inspector of Police and Another [2011 (4) KHC 689] observed like this:

"24. The PDPP Act was enacted with a view to curb acts of vandalism and damage to public property, including destruction and damage caused during riots and public commotion. The PDPP Act is an Act to provide for the prevention of damage to public property and for the matters connected therewith. The Act defines "public property". S.2 (a) of the PDPP Act provides that unless the context otherwise requires, "mischief" shall have the same meaning as in S.425 of the Indian Penal Code. Chapter XVII of the Indian Penal Code deals with offences against property. S.425 to 440 of the Indian Penal Code deal with "mischief". Punishment under these Sections vary from imprisonment for a term which may extend to three months to a term which may extend to ten years. Irrespective of the term of imprisonment as punishment, all the offences under Chapter XVII of the IPC are covered by S.437 (3) CrPC. S.5 of the PDPP Act provides that "no person accused or convicted of an offence punishable under S.3 or 4 shall, if in custody, be released on bail or on his own bond unless the prosecution has been given an opportunity to oppose the application for such release. The fourth proviso to S.437 CrPC provides for the opportunity of hearing to the Public Prosecutor only if the offence is punishable with death, imprisonment for life, or imprisonment for seven years or more. S.6 of the PDPP Act states that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. The scheme of the PDPP Act when considered along with S.437 of the Code of Criminal Procedure, it would be clear that in the matter of granting bail, a rigorous approach is contemplated when the offences alleged are under the PDPP Act. Such a rigorous approach is required in the matter of imposing conditions for granting bail also. A condition for deposit of the loss sustained to the Government as a condition for granting bail to the accused would be justified under S.437 and S.439 of the Code of Criminal Procedure. The decision of the Supreme Court in In Re Destruction of Public & Private Properties v. State of Andhra Pradesh 2009 (2) KLT 552: 2009 (5) SCC 212, 2009 (2) KHC 374:

AIR 2009 SC 2266: 2009 (1) KLD 664: 2009 CriLJ 2807: 2009 (5) SCALE 638 would also support such a view. For the reasons mentioned above, I am not inclined to accept the contention of the Petitioners that the decision in Hemanth Kumar and Others v. Sub Inspector of Police, 2011 (4) KHC 89: 2011 (4) KLT 288: 2011 (2) KLD 701: 2011 (4) KLJ 296: ILR 2011 (4) Ker. 261 requires reconsideration."

10. Similarly, this Court, while considering a bail application in a case alleging offences punishable under the provisions of the Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012, after relying on the judgment in Hemachandran's case (supra) observed like this:

"10. Trespass and Vandalism in hospitals is a problem faced by hospital authorities nowadays. The reason for the same may be because of the alleged negligence / illegal acts of the doctors, nurses, staff, etc attached to that hospital. But, for that purpose, the hospital building or hospital materials cannot be destroyed. The hospitals are the temples of modern society, where people go to worship the gods of health and wellness. Therefore any vandalism in hospitals should be avoided using the iron hands of law itself. Hence, some restrictions are necessary while granting bail in such cases also. The preamble of Act, 2012 reads like this:

"WHEREAS, it is expedient to prohibit violence against healthcare service persons and to prevent damage and loss to property in healthcare service institutions and to provide for matters connected therewith or incidental thereto;"

11. The preamble itself shows that the intention of the legislature is the prevention of damages and loss to property in healthcare institutions. As per S.4(4) of the Act, 2012, any offence under sub-section (1) shall 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 be cognizable and non-bailable. That shows the serious concern of the legislature in these types of cases. Hence while granting bail, in cases where offences under the Kerala Healthcare Service persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012 are alleged and if any damage is caused to the healthcare service institutions by the accused, the courts should impose conditions in the light of the principle laid down by this court in Hemanth Kumar and Others v. Sub Inspector of Police and Another (2011 (4) KHC 89) & Hemachandran M. T. @ Kamalesh and Others v. Sub Inspector of Police and Another (2011 (4) KHC 689). If the accused are found not guilty and they are accordingly acquitted, they would be entitled to get refund of the amount deposited by them. If the Court comes to the conclusion that the accused are liable to pay any fine / compensation, the amount in deposit can be utilised for payment of fine / compensation. I am also of the opinion that the legislature should consider making appropriate amendments in Act, 2012 to include such a condition for getting bail in these types of cases. The Registry will forward a copy of this order to the Chief Secretary, State of Kerala for appropriate action.

12. In this case, according to the prosecution, the 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 damage caused to the hospital is Rs. 10,000/-. Considering the facts and circumstances of the case, I think the petitioner can be released on bail with a direction that, the petitioner shall deposit an amount of Rs. 10,000/- before the Jurisdictional Court. If the accused is found not guilty and is accordingly acquitted in this case, the accused would be entitled to get the refund of the amount deposited. If the court comes to the conclusion that the accused is liable to pay fine, then this amount can be utilised for the payment of fine / compensation."

11. The Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019 (for short 'Act 2019') was enacted by the State legislature in the year 2019. As per Section 2(a) of the Act 2019, the "damaging act" means an act, causing damage or loss or destruction to any private property due to communal riot, hartal, bandh, demonstration, march, procession, blockade of road traffic or similar assembly by whatever name called, committed by an individual, group of individuals or organisation whether social, religious or political. Section 8 of the Act 2019 deals

2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 with the special provision as to bail in such cases. It will be better to extract Section 8 of the Act 2019:

"Special provision as to Bail.- No person accused under section 5 or section 6 shall be released on bail on execution of bond by two sureties and depositing in the court the amount not less than one-half the value of the property destroyed or damaged as may be determined by the court on the basis of police report or on furnishing bank guarantee for the said amount, unless the prosecution has been given an opportunity to oppose the application for such release."

12. Section 5 of the Act 2019 deals with the punishment for committing a damaging act. Section 6 of the Act 2019 deals with punishment for committing a damaging act by fire or explosive substance. A reading of the provisions of the Act 2019 makes it clear that the same is applicable only if a "damaging act" caused to any private property is due to a communal riot, hartal, bandh, demonstration, march, procession, blockade or road traffic 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 or similar assembly by whatever name called, committed by an individual, group of individuals or organisation whether social, religious or political. A damaging act of private property committed by an accused by trespassing into a house or building will not be covered under the provisions of the Act 2019.

13. Everyone constructs their dream house, office or other structures using their hard-earned money. They will also spend such money for furnishing their place, purchasing household articles, office materials etc. Destroying or damaging such private property is easy, but the pain suffered by the owners of such private property is immeasurable. The law will take some time to reach its logical conclusion because an investigation by the police and thereafter a trial by the court of law is necessary in such cases. This process may take some time. However, during the investigation, if it is revealed that the private property is damaged by the accused by trespassing into the 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 residential house, office and other buildings, I am of the considered opinion that the court of law can direct the accused to deposit the amount of damages as a condition for granting bail to the assailants. It can be termed as 'Legal Pinch' subject to the conclusion of the investigation and the conclusion of the trial by a competent Criminal Court. After investigation, if the Police find that there are no damages as alleged, the accused can file an appropriate application before the Jurisdictional Court to refund the amount. Similarly, if a final report is filed alleging mischief, but the court of law finds that the accused has not committed mischief, the person who deposited the amount can claim a refund. But, if the accused are convicted by a court of law for the offence of mischief, the court concerned can use the deposited amount to compensate the victims. If such a condition is imposed at the preliminary stage itself, there is a chance to decrease the vandalism and destruction, while trespassing into residential houses and other buildings. As I 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 said earlier, it will be a "legal pinch" to such assailants. Just like Section 8 in the Act 2019, I am of the considered opinion that the legislature should seriously think as to whether such a condition while granting bail is necessary in cases of house-trespass and mischief in residential houses, offices etc.

14. The above stand of this Court is justified in the light of the decision of the Hon'ble Apex Court, in Kodungallur Film Society and Another v. Union of India and Others [2018 (5) KHC 297]. The relevant portion of the above judgment is extracted hereunder:

"c) A person arrested for either committing or initiating, promoting, instigating or in any way causing to occur any act of violence which results in loss of life or damage to property may be granted conditional bail upon depositing the quantified loss caused due to such violence or furnishing security for such quantified loss. In case of more than one person involved in such act of violence, each one of them shall be jointly, severally and vicariously liable to pay the quantified loss. If the loss is yet to be quantified by the 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 appropriate authority, the judge hearing the bail application may quantify the amount of tentative damages (which shall be subject to final determination thereof by the appropriate authority) on the principle stated in paragraph 15 of the decision in In Re:

Destruction of Public and Private Properties (supra), after hearing the submissions of the State/agency prosecuting the matter in that regard."

15. Similarly, the Hon'ble Apex Court in Dharmesh @ Dharmendra @ Dharmo Jagdishbhai @ Jagabhai Bhagubhai Ratadia and Another v. State of Gujarat [2021 KHC OnLine 6302] observed like this:

"17. We may hasten to add that we are not saying that no monetary condition can be imposed for grant of bail. We say so as there are cases of offences against property or otherwise but that cannot be a compensation to be deposited and disbursed as if that grant has to take place as a condition of the person being enlarged on bail."

16. During the course of arguments, this court requested the Senior Counsel Advocate P. Vijayabhanu to address this court on this subject. Senior Counsel agreed 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 that, such conditions will definitely give a message to the society, but requested this court to consider the Dictum laid down by the Apex Court in Ramratan @ Ramaswaroop Vs. State of Madhya Pradesh (AIR 2024 SC 5518) and Ramesh Kumar Vs. State of NCT of Delhi ((2023) 7 SCC 461). This court considered the dictum in Ramratan's case (supra). That was a case in which bail conditions were imposed which led to deprivation of civil rights of the parties. In Ramesh Kumar's case (supra), the Apex Court deprecated cash deposit in bail conditions, in Section 420 IPC cases. Apex Court observed that it will transform into the process of recovery of the quantum of money allegedly cheated, which is not the duty of the criminal court. Those dictums are not applicable here. Moreover, a three-bench decision of the Apex Court in Kodungallur Film Society's case (supra) observed that, in property damages cases, such a bail condition is possible, which I extracted in paragraph 14 of this judgement.

2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025

17. This court is aware of the golden words of Honourable Justice V.R.Krishna Iyer: "To be poor, in this land of daridra narayana, is no crime and to recover debts by the procedure of putting one person in prison is flagrantly violative of Article 21 of the constitution" (See Jolly George Varghese and Another Vs. The Bank of Cochin ((1980) 2 SCC 360). The Apex Court said this about four decades back. Being a vandal by destroying the hard-earned properties of Daridra Narayana is, of course, a crime. Assailants should understand the sadness of people who suffered vandalism due to the destruction of their hard-earned dwelling house, household articles etc. As I mentioned earlier, if a "legal pinch" is given to such assailants at the bail stage itself, the tendency to destroy will decrease and a message will be sent to society. In appropriate cases, the court can relax the deposit of the amount of damage. But sufficient reason should be given. Keeping in mind, the golden words of Honourable Justice 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 V.R. Krishna Iyer, which I extracted earlier and also considering the plights of such victims, the court can pass appropriate orders. But it should be a speaking order. In other words, deposit is the rule and non-deposit is the exception.

18. In the light of the above principle, I am of the considered opinion that, if an offence of house trespass which is a non-bailable offence coupled with mischief is committed, the Court can direct the accused to deposit the amount of damages/half of the amount or even double the amount of damages as a condition for granting bail. The deposited amount will be subject to the investigation and trial, if any. If the accused is exonerated in the police investigation, the accused can file an application before the Jurisdictional Court to get back the amount deposited at the time of granting bail. Similarly, if the accused is acquitted by the court of law, the accused can get back the amount 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 deposited as a condition for bail. But, if the accused is convicted for such offences, the amount deposited can be directed to be disbursed to the victim in accordance with law.

19. Coming back to the facts of the case, in B.A. No.831/2025, the offences alleged include Sections 333 and 324(5) of BNS. The mischief committed as per the report is Rs.3,36,000/-. The Public Prosecutor submitted that the exact damage caused to the property was not assessed by the Investigating Officer. Considering the facts and circumstances of the case, I think at least half of the damages claimed by the defacto complainant can be directed to be deposited by the accused in this case. There are four accused in this case, the petitioners in this bail application are accused Nos.1 to 3. If that is the case, each of the petitioners can be directed to deposit an amount of Rs.45,000/- as a condition for granting the bail. It is true that the allegation against the petitioner includes the 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 offences under Section 118(1) of the BNS, which is also non-bailable. Considering the facts and circumstances of the case, I think the petitioners can be released on bail after imposing stringent conditions including a deposit of an amount of Rs.45,000/- each by the petitioners.

20. As far as B.A No.427/2025 is concerned, an objection is filed by respondents No.3 to 6 who are the victims in this case. In this case, the offence alleged includes Sections 333, 324(5) and 118(1) of BNS. The damage alleged to be caused is assessed as Rs.1 lakh. There are four accused in this case. In such circumstances, I think there can be a direction to the petitioners to deposit an amount of Rs.25,000/- each as a condition to grant bail. In this case also, the offence under section 118(1) BNS

is alleged. Considering the facts and circumstances of the case, I think the petitioners can be released on bail after imposing appropriate conditions.

21. I make it clear that the amount deposited by the 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 petitioners in these bail applications will be subject to the outcome of the investigation and also the final decision of the court of law, if the final report is filed. If the petitioners are exonerated by the police after investigation, the petitioners can claim the deposited amount from the jurisdictional court. Similarly, if the petitioners are acquitted by the court of law after trial, the petitioners can get back the amount from the court concerned by filing an appropriate application. However, if the petitioners are convicted for the offence of mischief, the court can utilise this amount to pay compensation to the victims.

Therefore, these bail applications are allowed in the following manner:

1. The petitioners shall appear before the Investigating Officer within four weeks from today and shall undergo interrogation.
2. After interrogation, if the Investigating Officer propose to arrest the petitioners, they shall 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 be released on bail on executing a bond for a sum of Rs.50,000/-(Rupees Fifty Thousand only) each with two solvent 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 cooperate 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.
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 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 accused, or suspected, of the commission of which they are suspected.
6. The petitioners in B.A. No.427 of 2025 shall deposit an amount of Rs.25,000/-(Rupees Twenty Five Thousand only) each and the petitioners in B.A. No. 831 of 2025 shall deposit an amount of Rs.45,000/-(Rupees Forty Five Thousand only) each before the jurisdictional court and produce the receipt before the Investigating Officer at the time of surrender. The deposited amount will be subject to the investigation in the case and also subject to the final decision of the court of law.

7. Needless to mention, it would be well within the powers of the investigating officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, 2025:KER:9541 Bail Appl. Nos.427 & 831 of 2025 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].

8. If any of the above conditions are violated by the petitioners, the jurisdictional Court can cancel the bail in accordance with 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 JV/NJV/AMR/DM