

**"C.R."**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 3<sup>RD</sup> DAY OF JUNE 2024 / 13TH JYAISHTA, 1946

BAIL APPL. NO. 4368 OF 2024

CRIME NO.297/2017 OF NEDUMBASSERY POLICE STATION, ERNAKULAM

BAIL APPL. NO.3403 OF 2024 OF HIGH COURT OF KERALA

PETITIONER/ACCUSED:

SUNIL.N.S  
AGED 34 YEARS  
NEDUIVALIKKUDI, ELAMPAKKAPPILLY, VENGOOR,  
KOOVAPPADY, ERNAKULAM, PIN - 683544  
BY ADVS.  
V.V.PRATHEEKSH KURUP  
RAVI KRISHNAN  
DEV NANDAN A.

RESPONDENT:

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

OTHER PRESENT:

SRI.B.S.SYAMANTAK, PP,  
SRI.R.BINDU(SASTHAMANGALAM) - AMICUS CURIAE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
03.06.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**“C.R.”**

**P.V.KUNHIKRISHNAN, J.**

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**B.A.No.4368 of 2024**  
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**Dated this the 03<sup>rd</sup> day of June, 2024**

**ORDER**

This Bail Application is filed under Section 439 of the Criminal Procedure Code (for short, 'Cr.P.C.') by the petitioner on 23.05.2024, i.e., within three days after dismissing his earlier bail application filed as B.A.No.3403/2024. This is the 10<sup>th</sup> bail application filed by the petitioner under Section 439 Cr.P.C. Whether the petitioner is entitled to file bail application after bail application, when this Court already observed that the petitioner has to face trial in custody? When repeated bail applications are filed by an accused without any change of circumstances, whether this Court can impose costs? These are the questions to be decided in this case.

2. Petitioner/accused Sri.Sunil N.S. is the 1<sup>st</sup>

accused in Crime No.297/2017 of Nedumbassery Police Station, Ernakulam which is generally known in Kerala as a case of 'assault against the cine actress'. The above case is now pending before the Principal Sessions Court, Ernakulam as S.C.No.118/2018.

3. The prosecution case is that, in furtherance of a criminal conspiracy by a movie star, who is the 8<sup>th</sup> accused in the case, the petitioner/ 1<sup>st</sup> accused, along with certain other accused, abducted and sexually assaulted the victim in this case in a moving car. The victim is also a movie star as stated above. The offence alleged against the petitioner and other accused persons are under Sections 120B, 109, 342, 366, 354, 354 B, 357, 376 D, 201 and 212 r/w Section 34 of the Indian Penal Code and also under Sections 66E and 66A of the Information Technology Act, 2000.

4. Admittedly the petitioner has been in custody in connection with the above case from 23.02.2017 onwards. The trial in S.C.No.118/2018 is in progress before the

Principal Sessions Court, Ernakulam under the supervision of the Apex Court because the Apex Court fixed a time limit for disposing of the case. The prosecution case is affecting the conscience of the society because the victim in this case, who is a movie star, was taken in a car and she was sexually abused from the moving car by the petitioner and conspiracy was alleged against the 8<sup>th</sup> accused who is another movie star. The prosecution case is shocking to the conscience of the Keralites and they are closely watching the trial of the above case.

5. The petitioner, who is the 1<sup>st</sup> accused in the case against whom serious allegations are raised, moved this Court by filing a bail application as B.A.No.1216/2017 originally through Adv. E.C. Poullose and others. That bail application was dismissed as withdrawn. Thereafter B.A.No.4121/2017 was filed through Adv. B.A. Aloor on 14.06.2018. That bail application was also dismissed as withdrawn. Subsequently, B.A.No.6553/2017 was filed through Adv. B.A. Aloor and others. That bail application

was considered by this Court in detail and dismissed the same with a direction to expedite the trial.

6. Thereafter, B.A.No.7108/2020 was filed through Adv. V. John Sebastian Ralph and others and that bail application was also dismissed as withdrawn. Again B.A. No.3409/2021 was filed by Adv. V. John Sebastian Ralph and he relinquished vakalath and consequently Adv. V.V. Pratheesh Kurup appeared for the petitioner. That bail application was also dismissed as withdrawn.

7. Subsequently, B.A.No.2594/2022 was filed before this Court. This Court dismissed the above bail application after considering all the contention of the petitioner. This Court observed that, in a serious case like this in which there are specific allegations against the petitioner, it is not appropriate to release the petitioner on bail. This Court also observed that it will convey a wrong signal to the society. Accordingly, the bail application was dismissed. The above order was challenged by the

petitioner by filing Special Leave to Appeal (Crl.) No.3394/2022 before the Apex Court which was dismissed on 13.07.2022. But the Apex Court observed that, if the trial is not concluded within a reasonable time, the petitioner is at liberty to renew his application for grant of bail pending trial before the High Court. Based on the above observation, the petitioner filed B.A.No.1023/2023 before this Court. This Court considered the contentions of the petitioner in detail in the light of the order of the Apex Court and dismissed the bail application on 06.03.2023. Relevant portion of the above judgment is extracted hereunder:

“15. After going through the prosecution case and keeping in mind the above principle laid down by the Apex Court, I am of the considered opinion that the petitioner/accused is not entitled bail even though he has been jail for about six years. The petitioner/accused should face trial in custody in the peculiar facts and circumstances of this case.”

8. Thereafter the petitioner again approached the Apex Court by filing Special Leave to Appeal (Crl.)

No.4541/2023 challenging the order in B.A.No.1023/2023.

The Apex Court dismissed the above Special Leave to Appeal with following observation:

“We find no ground to interfere with the impugned order passed by the High Court. Special Leave petition is, accordingly, dismissed. However, let the trial be expedited.”

9. Thereafter the petitioner again filed B.A.No.7254/2023 before this Court. That bail application was also dismissed by this Court as per order dated 25.08.2023.

10. Again the petitioner filed B.A.No.3403/2024 on 16.04.2024. That bail application was dismissed by this Court on 20.05.2024. Thereafter the present bail application is filed on 23.05.2024, i.e., three days after the dismissal of B.A.No.3403/2024. When this bail application came up for consideration, this Court informed the counsel that this is a frivolous petition which is to be dismissed with costs. This Court appointed Adv.R.Bindu (Sasthamangalam) as Amicus Curiae to address this Court

whether a bail application can be dismissed with costs. Thereafter the bail application came up for consideration on 29.05.2024 and 31.05.2024. On all these occasions, the counsel for the petitioner sought adjournment. Today, the counsel again argued the matter and submitted that the petitioner is in custody for about 7 years and he may be released on bail. He repeated the contentions raised in the bail application. The Public Prosecutor seriously opposed the bail application. The Amicus Curiae submitted that in appropriate cases this Court has jurisdiction to impose costs even in bail application. The Amicus Curiae relied on the judgment of the Apex Court in **Vinod Seth v. Devinder Bajaj and Another** [2010 KHC 4412].

11. The following two points are to be decided in this case:

1. Whether this bail application is to be entertained which is filed just three



days after dismissing the earlier bail application ?

2. Whether this bail application is to be dismissed with costs ?

12. In effect this is the 10<sup>th</sup> bail application filed by the petitioner under Section 439 Cr.P.C. As I mentioned earlier, this is a prosecution which is closely watched by the society and the trial is progressing before the trial court. The Apex Court is also monitoring the trial. This Court considered the bail applications of the petitioner on several occasions and dismissed those bail applications. Two of the orders passed by this Court are confirmed by the Apex Court also. This Court clearly stated that the petitioner has to face trial in custody. That order is confirmed by the Apex Court. Thereafter B.A.No.3403/2024 is filed. Again this Court dismissed the bail application. Within three days after the dismissal of B.A.No.3403/2024, the present bail application is filed. I

am of the considered opinion that there is absolutely no change of circumstances for the present bail application especially because this Court already observed that the petitioner has to face trial in custody. Hence this bail application need not be entertained and is to be dismissed.

13. The next question is whether costs are to be imposed on the petitioner for filing this bail application, which is filed just three days after the dismissal of his earlier bail application.

14. It is a settled position that once the bail application is rejected by the Court, the accused can file a second bail application only if there is a change of circumstances. This Court in **Vineeth v. State of Kerala** [2015 (5) KHC 224] considered the maintainability of successive bail applications under section 438 Cr.P.C. The relevant portion is extracted hereunder:

“15. As a general rule, it can be stated that a second application for anticipatory bail is not barred. Even

though the principle of *res judicata* is not directly applicable in a criminal case, especially in a bail application, there is a strong line of thinking that the courts are bound by the doctrine of judicial discipline. Therefore, the general proposition that a second bail application for pre-arrest bail is not legally barred is controlled by certain riders. Primarily, it has to be established by the applicant in the second application that there is a material change in the fact situation which makes him entitled to seek the relief. In other words, the applicant should establish a change in the circumstances sufficient to persuade the court to invoke its extraordinary jurisdiction in favour of him. The change of circumstances can be in many ways. For example, his earlier application must have been disposed of by the court considering the submission of the Prosecutor that he was not involved in any offence at that time or that he was involved only in bailable offences. Another instance could be that the petitioner might have been accused of a non-bailable offence of a grave nature and therefore the court must have felt that his custodial interrogation was essential for a proper investigation. If the petitioner subsequently shows that though he is involved in a non-bailable offence, the gravity of the offence is much lesser than that had been initially alleged against him and there is no reason for any custodial interrogation, then he may legitimately claim a relief under Section 438 Cr.P.C. These are some of the

instances the petitioner may rely on to urge that there is a material change in the fact situation enabling him to seek a pre-arrest bail through a subsequent application. In the absence of any such plea raised or fact established at the time of hearing, no doubt, an applicant is legally not entitled to seek pre-arrest bail by way of a second application.”

15. The same principle is applicable in a petition filed under Section 439 Cr.P.C. Primarily, it has to be established by the applicant in the second application that there is a material change in the factual situation which makes him entitled to seek the second relief. In other words, as observed by this Court, the applicant should establish a change in the circumstances sufficient to persuade the court to invoke the bail jurisdiction in favour of him. A perusal of the averments in this bail application would show that there is absolutely no change of circumstances mentioned after the dismissal of B.A.No.3403/2024 on 20.05.2024 by this court. Therefore it is clear that this bail application is frivolous because it is

filed within three days after the dismissal of his earlier bail application without any change of circumstances.

16. The next question to be decided is whether this bail application filed under Section 439 Cr.P.C. can be dismissed with costs. The Amicus Curiae cited a judgment of the Apex Court in **Vinod Seth's** case (supra) in which the Apex Court considered the provision for costs and the intention to achieve the goals while imposing costs. It will be beneficial to extract the relevant portion of the about judgment:

"37. The provision for costs is intended to achieve the following goals:

- (a) It should act as a deterrent to vexatious, frivolous and speculative litigations or defences. The spectre of being made liable to pay actual costs should be such, as to make every litigant think twice before putting forth a vexatious, frivolous or speculative claim or defence.
- (b) Costs should ensure that the provisions of the Code, Evidence Act and other laws governing procedure are scrupulously and strictly complied with and that parties do not adopt delaying tactics or mislead the court.

- (c) Costs should provide adequate indemnity to the successful litigant for the expenditure incurred by him for the litigation. This necessitates the award of actual costs of litigation as contrasted from nominal or fixed or unrealistic costs.
- (d) The provision for costs should be an incentive for each litigant to adopt alternative dispute resolution (ADR) processes and arrive at a settlement before the trial commences in most of the cases. In many other jurisdictions, in view of the existence of appropriate and adequate provisions for costs, the litigants are persuaded to settle nearly 90% of the civil suits before they come up to trial.
- (e) The provisions relating to costs should not however obstruct access to courts and justice. Under no circumstances the costs should be a deterrent, to a citizen with a genuine or bona fide claim, or to any person belonging to the weaker sections whose rights have been affected, from approaching the courts."

17. Of course the above decision is rendered by this Court while deciding a civil case. But the Apex Court observed that the costs should ensure that the provisions of the Civil Procedure Code, Evidence Act and other laws governing procedure are scrupulously and strictly

complied with and that parties do not adopt delaying tactics or mislead the court. If there is any deviation from the above, this Court has got ample power to impose costs.

18. Moreover, Section 482 Cr.P.C. give ample power to this Court to pass appropriate orders necessary to give effect to any order under the Criminal Procedure Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. Therefore this Court has ample power to impose costs even in a bail application.

19. Whether this Court can impose costs on an accused for filing repeated bail applications when he is in custody for about 7 years is the next question to be decided. But it is a fact that the petitioner filed about 10 bail applications before this Court through different lawyers. The petitioner approached the Apex Court also on two occasions. If the petitioner has financial difficulties, he will approach the Legal Services Authority

to engage a lawyer. But he chose to engage his own lawyers which of course is his right. But from the conduct of the petitioner that he is filing bail application after bail application before this Court and the Apex Court, it is clear that either he is financially fit or there are some others behind the curtain to help him to file these bail applications. It is to be remembered that, conspiracy is alleged in the main case for the alleged act by the petitioner. Therefore, there is nothing wrong in imposing costs on the petitioner even if the petitioner is in custody for about 7 years.

20. As I observed earlier, this is a bail application filed just three days after the earlier bail application was dismissed. Absolutely no change of circumstances is mentioned in this bail application after the dismissal of B.A.No.3403/2024. Therefore, this is a fit case in which the bail application is to be dismissed with costs.

Therefore, this bail application is dismissed imposing



a costs of Rs.25,000/- (Rupees Twenty five thousand only) to the petitioner. The petitioner shall pay the costs to the Kerala Legal Services Authority within one month from the date of receipt of a copy of this order and if the costs are not paid, the Legal Services Authority is free to recover the same from the petitioner and his assets.

DM / JV

Sd/-  
**P.V.KUNHIKRISHNAN**  
**JUDGE**

APPENDIX OF BAIL APPL. 4368/2024

PETITIONER ANNEXURES

- ANNEXURE 1 TRUE COPY OF THE ABOVE-MENTIONED ORDER OF THE HON'BLE SUPREME COURT DATED 13.07.2022 IN SLA (CRL) 3394/2022
- ANNEXURE 2 TRUE COPY OF THE ORDER DATED 06.03.2023 IN B.A. 1023/2023 OF THIS HON'BLE COURT
- ANNEXURE 3 TRUE COPY OF ORDER DATED 17.04.2023 IN SPECIAL LEAVE TO APPEAL (CRL.) NO.4541/2023 OF THE HON'BLE SUPREME COURT.
- ANNEXURE 4 TRUE COPY OF THE ORDER DATED 25.08.2023 IN B.A. 7254/2023 OF THIS HON'BLE COURT
- ANNEXURE 5 TRUE COPY OF THE ORDER DATED 20.05.2024 IN B.A. 3403/2024 OF THIS HON'BLE COURT.
- ANNEXURE 6 ORDER DATED 20-05-2024 IN BAIL APPL.3403/2024 ON HIGH COURT

RESPONDENTS EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE