IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 29TH DAY OF JULY 2024 / 7TH SRAVANA, 1946

BAIL APPL. NO. 4975 OF 2024

CRIME NO.1596/2023 OF Pooyapally Police Station,Kollam

PETITIONER/S:

ANUPAMA PADMAKUMAR,
AGED 22 YEARS
D/O.PADMAKUMAR,KAVITHARAJ, MAMBALLYKUNNAM,
CHATHANNOOR.P.O., KOLLAM, PIN - 691572

BY ADVS.
SUMAN CHAKRAVARTHY
V.RENJITH SHANKAR
SHIJU ABRAHAM VERGHIS
PRABHU VIJAYAKUMAR
BREJITHA UNNIKRISHNAN

RESPONDENT/S:

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

BY ADVS.

SRI C.K SURESH - SENIOR PUBLIC PROSECUTOR
SRI.GRASHIOUS KURIAKOSE - ADDL.DIRECTOR GENERAL OF PROSECUTION

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.S.DIAS,J

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Bail Application No.4975 of 2024

Dated this the 29th day of July, 2024

O R D E R

The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the third accused in Crime No.1596/2023 of the Pooyappally Police Station, Kollam, which is registered against three accused persons (husband, wife and daughter), for allegedly committing the offences punishable under Sections 120B, 468, 471, 363, 323, 308, 328, 506(ii), 346, 347, 364A, 417 and 201 read with Sec.34 of the Indian Penal Code and Secs.77 and 84 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The petitioner was arrested and remanded to judicial custody on 2.12.2023.

2. The gravamen of the prosecution case is that; the accused, who were facing a grave financial crisis, in furtherance of their common intention, had hatched a conspiracy to kidnap the victim (CW No.2), a minor female child aged six years, for ransom. Accordingly, on 27.11.2023, at around 16.00 hours, the accused 1 to 3 reached the place of occurrence in a car driven by the first accused (father), and the accused 2 and 3 (mother and daughter) seated in the rear seats, forcefully abducted the victim child from near her house and wrongfully confined the victim in their house at Chathannoor. After kidnapping the victim, they made a ransom call to the victim's parents. Despite the victim's brother (CW No.3) trying to rescue his sister, the accused sped away in the car. Due to the intense and meticulous action by the Police, the accused abandoned the child at Asramam ground and fled away to Tamil Nadu. The

accused also destroyed the evidence. Thus, the accused have committed the above offences.

3. Heard; Sri. Suman Chakravarthy, the learned counsel appearing for the petitioner and Sri.Grashious Kuriakose, the learned Additional Director General of Prosecution.

4. The learned counsel for the petitioner strenuously argued that the petitioner is innocent of the accusations levelled against her. The petitioner is only a 22-year-old girl who is pursuing her education. A reading of Annexure-2 final report would establish that the specific overt acts are attributed against the parents of the petitioner – the accused 1 and 2. Therefore, the offences will not be attracted against the petitioner. Even going by the allegation in the final report, it was the first accused who drove the car and the second accused who pulled the victim into the car. The only allegation against the petitioner is that she beat on the hands

of CW3 with a stick. The identification parade conducted in the crime was a farce. By Annexure-3 order, this Court has permitted the petitioner to pursue law in the Bengaluru Law College. The investigation in the case is complete, recoveries have been effected, and Annexure-2 final report has been laid on 29.1.2024. The petitioner does not have any criminal antecedents. The learned counsel relied on the decision of the Hon'ble Supreme Court in **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh [2024 KHC Online 6380]** to fortify his contention that bail cannot be denied to an accused solely on the ground that the charge is serious, especially when there is no end in sight for the trial to conclude and that the High Courts have forgotten a well-settled principle that the bail is not to be withheld as a punishment. The petitioner is also entitled to the presumption of innocence. Since the petitioner has been in judicial

incarceration for more than seven months, the petitioner is entitled to be enlarged on bail. Hence, the application may be allowed.

5. The learned Additional Director General of Prosecution, stoutly opposed the application. He submitted that the petitioner is the kingpin of the crime. The petitioner and her parents are reeling in debt. It was at the instigation of the petitioner that the accused decided to kidnap children and tide over their financial crisis. In a notebook recovered by the Investigating Officer, which the petitioner handwrote, she has meticulously crafted a game plan to kidnap children and make money. The car used to kidnap the victim had a fake number plate, which explicitly proves their mens rea. Therefore, the application may be dismissed. The Investigating Officer has filed a bail objection report, inter alia, contending that there is CCTV footage that establishes

the involvement of the accused in the crime. The notebook written by the petitioner substantiates her detailed planning. Although the petitioner was projecting herself as a Youtuber, actually, she was using artificial intelligence to deceive people. The victim's statement unambiguously proves the petitioner’s active participation in the crime. The act of the accused has had adverse ramifications on the public and has sent shock waves among the students and parents, which has affected free movement in society. If the petitioner is released on bail, it would have a deleterious impact on the society. As the petitioner and her parents have committed a heinous offence, this Court may not take a lenient view in the matter. Hence, the application may be dismissed.

6. It is trite law that a detailed examination of the evidence and elaborate documentation of the merit of the case

need not be undertaken at the stage of considering a bail application. However, such orders should indicate reasons for prima facie concluding why bail is granted or refused, particularly where the accused is alleged to have committed a serious offence. (Read **Kalyan Chandra Sarkar v. Rajesh Ranjan** [(2004) 7 SCC 528].

7. The prosecution allegation against the accused is that, due to their adverse financial crisis, they had hatched a conspiracy to kidnap the children for ransom and make good their debts. Consequently, the accused 1 to 3, in furtherance of their common intention, kidnapped the victim. It is alleged that while the victim and her brother were walking on the road, the second accused pulled the victim into the car, the third accused hit CW3 on his hands , and the first accused drove away the vehicle from the place of occurrence.

Subsequently, on the following day, the accused abandoned the victim at Asramam ground.

8. On an evaluation of the materials placed on record, especially Annexure-2 final report, this Court has no doubt in its mind that the allegations attributed against the accused are serious and grave.

9. The learned counsel for the petitioner submitted that until the filing of this application, the Investigating Officer had contended that it was the first accused who was the mastermind of the crime. After the filing of the present application, the prosecution shifted its stand and made the petitioner the mastermind of the crime. The petitioner is a 22-year-old girl. The learned Additional Director General of Prosecution contended that all the accused played an equal role in kidnapping the victim and demanding ransom.

10. On a scrutiny of Annexure-2 final report, it can be deciphered that it was the first accused who allegedly drove the car and the second accused who pulled the victim into the vehicle. The allegation against the petitioner is that she had hit the hand of the brother of the victim and facilitated the first accused to speed away with the car. The fact remains that the petitioner has been in judicial custody since 2.12.2023, which is more than seven months now, that the investigation in the case is complete, and the final report has been laid on 29.1.2024. Even though the petitioner had filed an application before the Court of Session, the same was dismissed by Annexure-4 order, considering the gravity of the crime.

11. In a trailblazing decision in **Satender Kumar Antil v. CBI and another** [(2022) 10 SCC 51], the Hon'ble Supreme Court, after a meticulous survey of all the precedents

on the law governing bail, has laid down exhaustive guidelines for the Courts while dealing with the bail applications. It is profitable to extract the relevant paragraphs of the decision in this context of the case on hand, which reads thus:

> **"12.** The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This Court in *Nikesh Tarachand Shah* v. *Union of India* [*Nikesh Tarachand Shah* v. *Union of India*, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] , held that : (SCC pp. 22-23 & 27, paras 19 & 24)
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> "*19.* In *Gurbaksh Singh Sibbia* v. *State of Punjab* [*Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the purpose of granting bail is set out with great felicity as follows : (SCC pp. 586-88, paras 27-30)
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> '*27.* It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in *Nagendra Nath Chakravarti, In re* [*Nagendra Nath Chakravarti, In re*, 1923 SCC OnLine Cal 318 : AIR 1924 Cal 476] , AIR pp. 479-80 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the "Meerut Conspiracy cases" observations are to be found regarding the right to bail which deserve a special mention. In *K.N. Joglekar* v. *Emperor* [*K.N. Joglekar* v. *Emperor*, 1931 SCC OnLine All 60 : AIR 1931 All 504]

it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In *Emperor* v. *H.L. Hutchinson* [*Emperor* v. *H.L. Hutchinson*, 1931 SCC OnLine All 14 : AIR 1931 All 356] , AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in *Gudikanti Narasimhulu* v. *Public Prosecutor* [*Gudikanti Narasimhulu* v. *Public Prosecutor*, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that : (SCC p. 242, para 1)

"*1*. … the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. … After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right."

29. In *Gurcharan Singh* v. *State (Delhi Admn.)* [*Gurcharan Singh* v. *State (Delhi Admn.)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it

was observed by Goswami, J., who spoke for the Court, that : (SCC p. 129, para 29)

> "*29*. … There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."
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> *30*. In *American Jurisprudence* (2nd Edn., Vol. 8, p. 806, para 39), it is stated:
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> "Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.'

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24. Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post *Maneka Gandhi* v. *Union of India* [*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248] ."

13. Further this Court in *Sanjay Chandra* v. *CBI* [*Sanjay Chandra* v. *CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] , has observed that : (SCC p. 52, paras 21-23)

"*21*. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused

person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

Presumption of innocence

14. Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the court. Thus, it is for that agency to satisfy the court that the arrest made was warranted and enlargement on bail is to be denied."

12. In the same decision, the Hon'ble Supreme Court has reminded the High Courts and Courts of Session that when the accused is a lady, the provisions under Sec.437 of

the Code of Criminal Procedure have to be applied. It is apposite to extract the said observations, which reads thus:

> **"69.** Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused person is sick or infirm. In a case pertaining to women, the court is expected to show some sensitivity. We have already taken note of the fact that many women who commit cognizable offences are poor and illiterate. In many cases, upon being young they have children to take care of, and there are many instances when the children are to live in prisons. The statistics would show that more than 1000 children are living in prisons along with their mothers. This is an aspect that the courts are expected to take note of as it would not only involve the interest of the accused, but also the children who are not expected to get exposed to the prisons. There is a grave danger of their being inherited not only with poverty but with crime as well.

13. In **Sheikh Javed Iqbal's** case (supra)**,** the Hon'ble Supreme Court has recently reiterated that an accused is entitled to a speedy trial. When the trial gets protracted, it is open for the prosecution to oppose the bail on the grounds that the offence is serious. However, bail cannot be denied only on the grounds that charges are very serious, though there is no end in sight for the trial to conclude. Once it is evident that a timely trial is not possible and the accused has suffered

incarceration for a sufficient period of time, the Courts should ordinarily be obligated to enlarge the accused on bail, and attempts should be made by the Courts to balance the rights of the accused and the objections of the prosecution based on the fundamental rights guaranteed under Part-III of the Constitution of India.

14. In the case on hand, as already observed above, there is no doubt that the allegations against the accused are serious and heinous. The petitioner is alleged to have committed the offences along with her parents. Prima facie materials show that the accused are in debt, which has impelled them to commit the above crime. We should be equally mindful that a 22-year-old girl falls within the bracket of ‘women’ under Sec.437 of the Code. The petitioner has been in judicial custody for the last seven months, the investigation in the case is complete, and Annexure-2 final

report has already been filed on 29.1.2024. Admittedly, the petitioner does not have any criminal antecedents.

15. After considering the facts, the rival submissions made across the Bar, the materials placed on record, the law laid down by the Hon'ble Supreme Court in the afore-cited decisions, and my findings referred to above, I am convinced that the petitioner's further detention is unnecessary. Hence, I hold that the petitioner is entitled to be enlarged on bail but subject to stringent conditions.

In the result, the application is allowed by directing the petitioner to be released on bail on her 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, which shall be subject to the following conditions:

(i) The petitioner shall appear before the Investigating Officer every third Saturday till the conclusion of the trial in Crime No.1596/2024. She shall also appear before the Investigating Officer as and when required;

(ii) The petitioner shall not directly or indirectly make any inducement or threat to the victim or the witness or procure to any person acquainted with the facts of the case to dissuade them from disclosing such facts to the court or any Police Officer or tamper with the evidence in any manner, whatsoever;

(iii) The petitioner shall not commit any offence while she is on bail;

(iv) The petitioner shall surrender her passport, if any, before the court below at the time of execution of the bond. If she has no passport, she shall file an affidavit to the effect before the court below on the date of execution of the bond;

(v) The petitioner shall not enter the Kollam District, other than for reporting before the Investigating Officer as observed in this order, till the conclusion of the trial in Crime No.1596/2024.

(vi) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

(vii) Applications for deletion/modification of the bail conditions shall be moved and entertained by the court below.

(viii) 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, given by the petitioner even while the petitioner is 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].

(ix) The observations made in this order are only for the purpose of considering the applications, and they shall not be construed as an expression on the merits of the case to be decided by jurisdictional Courts.

sd/-

sks/29.7.2024 **C.S.DIAS, JUDGE**