

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

THURSDAY, THE 23RD DAY OF JUNE 2022 / 2ND ASHADHA, 1944

BAIL APPL. NO. 4747 OF 2022

CRIME NO.511/2022 OF Valiyathura Police Station, Thiruvananthapuram

PETITIONERS/ACCUSED NOS.1 & 2:

- 1 FURSEEN MAJEED,AGED 27 YRS., S/O.ABDUL MAJEED
DHARUSIRAJ,NEAR VELLIYAMBARAMPU PAZHASHIRAJA COLLEGE,
POST PAZHASHI RAJA NSS COLLEGE,MATTANNUR,
(PIN CODE - 670702) KEEZHALLUR PANCHAYAT,
THALASSERRY TALUK,
- 2 RK NAVEEN,AGED 37 YRS., S/O.NARAYANAN P.V.,
NARAYANEEYAMVEEDU,NEAR KAVIDESSRRY MAHADEVA
TEMPLE,THALASSERRY TALUK,,KODALI PANCHAYAT,
KODOLIPRAM DESOM,PATTANNOOR,POST PATTANNOOR-670602
KANNUR DISTRICT.

BY ADV T.ASAF ALI

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682031
- 2 STATION HOUSE OFFICER,
VALIYATHURA POLICE STATION,
POST VALIYATHURA-695008,
THIRUVANANTHAPURAM-KERALA.

BY
SRI.T.A.SHAJI, DIRECTOR GENERAL OF PROSECUTION(AG-10)
SRI.P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23.06.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VIJU ABRAHAM, J.

.....
BA No.4747 of 2022
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Dated this the 23rd day of June, 2022

ORDER

This is an application seeking regular bail.

2. Petitioners are arrayed as accused Nos.1 and 2 in Crime No.511 of 2022 of Valiyathura Police Station alleging commission of offences punishable under Sections under Sections 120B, 332, 307, 34 of the Indian Penal Code, Section 11A of the Aircraft Act 1934, Rule 22 of the Aircraft Rules, 2012 and Section 3(1)(a) of the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982.

3. The prosecution allegation is that on 13.06.2022 at 5.00 p.m. aboard the flight No.6E-7407 Indigo, the petitioners by defying the directions of the aircraft crew, shouted threats and rushed toward Mr.Pinarayi Vijayan, the Hon'ble Chief Minister of Kerala, who was occupying seat No.20A of the same flight, posed threat to his safety and security and attempted to commit murder. It is also alleged that the petitioners and their companion, the 3rd accused in the case, caused hurt to the informant, the security staff of the Chief Minister and deterred him from discharging his public duty and thus committed the offences alleged.

4. The petitioners were arrested on 14.06.2022 and were produced before the Judicial First Class magistrate Court-XI,

Thiruvananthapuram and they were remanded to judicial custody for a period of 14 days. Though an application for bail was filed the same was dismissed by Annexure-A2 holding that the Magistrate Court has no jurisdiction to entertain the same, as the offence punishable under the provision of the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 is also invoked.

5. Adv. T. Asaf Ali, learned counsel appearing for the petitioners contended that the allegations made against them are false and that they are only activists of the Indian Youth Congress who raised slogans as part of peaceful protest urging the resignation of the Hon'ble Chief Minister against whom serious allegations of gold smuggling have been made by one Swapna Suresh, an accused in gold smuggling case and onetime close associate of Chief Minister's office. Learned counsel for the petitioners submits that the petitioners were travelling from Kannur to Thiruvananthapuram on 13.06.2022 by flight No.6E-7407 Indigo. Both of them were going to visit a patient undergoing treatment at Regional Cancer Centre, Thiruvananthapuram. The petitioners were allowed to board the aircraft after a thorough security check from Kannur Airport and the journey was very peaceful. The petitioners were seated at the extreme front seat and the Hon'ble Chief Minister was seated in extreme rear side seat No.20A near the door and his companion E.P.Jayarajan and two security personnel were also seated near him in extreme rear seats. When the aircraft landed at Thiruvananthapuram Airport, and when

the doors of the flight were opened for disembarkation by the appearance of red light, the petitioners raised slogans in a peaceful manner from their seats against the Hon'ble Chief Minister seeking his resignation, and then his companion Mr.E.P.Jayarajan, suddenly came in front towards petitioners and turned against them, forcefully pushed them away and manhandled them and then the informant, the security officer of Hon'ble Chief Minister also came in front and manhandled the petitioners, as a result of which both petitioners sustained serious injuries, which has been duly reported by the Airport Medical Officer, and made mention of in the remand report also. Thereafter the petitioners were taken to Govt. Medical College, Thiruvananthapuram for treatment following the injuries sustained by them. It is further submitted that no manner of violence or other untoward incident occurred on board as alleged by the prosecution. There is no allegation that petitioners disobeyed any of the directions of the aircraft authorities as alleged so as to attract any of the offences punishable under the Indian Aircraft Act. A perusal of the contents in the FIR, as well as the remand report, would reveal that there is no chance of use of force by the petitioners on board against the Hon'ble Chief Minister and that by no stretch of imagination, mere raising of slogans can be portrayed as an attempt to kill the Hon'ble Chief Minister, so as to attract the offences alleged especially Section 307 IPC. There was no act of violence against any person on board the aircraft, in flight that endangered the safety of the aircraft and therefore Section 3(a) of the

Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 is not applicable. The counsel for the petitioners relying on Annexure-A3 communication issued by the airport manager submitted that the only information intimated to the police authorities by the airport manager is about an altercation that took place on the board of the flight between three passengers who were seated on seat Nos.8A, 8C and 7D. Petitioners further rely on Annexure-A8 communication issued by the airport manager to the police in which also there is mention about an altercation that took place on board the aircraft and further an intimation that three passengers on board the flight stood up from their respective seats and ran towards the Hon'ble Chief Minister shouting slogans in their vernacular language and upon seeing this one of the passengers travelling with the Hon'ble Chief Minister intervened. Based on Annexures A3 and A8, learned counsel for the petitioners would submit that these are the information conveyed by the authorities at the first point of time which does not convey the commission of any offences as alleged against the petitioners. It is further submitted by the counsel for the petitioners that the contents of Annexure-A7 FI statement also do not attract any of the offences alleged against the petitioners. It is the case of the petitioners that when the gist of Annexure-A7 FI statement was entered in the FIR, the investigating officer has given an improved version, which itself will prove the falsity of the allegations. Learned counsel for the petitioners relying on Annexures-A4 to A7 medical records

submitted that the petitioners were brutally manhandled and the fact that the petitioners were injured is also revealed from Annexure-A1 remand report.

6. The learned Director General of Prosecution Sri.T.A.Shaji submitted that the acts alleged to be committed by the petitioners are part of a conspiracy to attack and murder the Hon'ble Chief Minister and to fulfill their common object. On 13.06.2022, while the Hon'ble Chief Minister of Kerala was travelling from Kannur to Thiruvananthapuram in Indigo flight No. 6E 7407, the petitioners along with the 3rd accused intentionally travelled in the same flight and when the flight was about to land, the petitioners and 3rd accused walked inside the flight raising political slogans and rushed to seat No. 20A where the Hon'ble Chief Minister was sitting and shouted at him that they will not allow him to survive and by the time personal security officer tried to restrain their act, the petitioners along with the 3rd accused manhandled him and voluntarily caused hurt to deter the public servant from doing his duty and also attempted to murder the Hon'ble Chief Minister. It is further contended that after getting out of the flight the petitioners tried to abscond from the scene and they were restrained and when the duty doctor of the airport consulted them he intimated that the petitioners need medical aid and hence they were shifted to Medical College Hospital, Thiruvananthapuram and treated as inpatient and they were arrested on 14.06.2022. It is submitted that all the accused were named in the FIR

and the call data showed that the petitioners were in constant touch on 12th and 13th of June, 2022 and that the tickets were purchased at the same time and the same was booked using the phone of the 1st accused and the tickets were collected by the 2nd accused. It is further submitted that the CCTV footage of the Kannur Airport will reveal that all the accused persons came together from Kannur. It is further submitted that the 1st accused is involved in 13 criminal cases and the 3rd accused is involved in 2 other cases and that all the three accused were jointly involved in a crime. It is further submitted that the custody application was allowed by the Sessions Court, Thiruvananthapuram on 21.06.2022 and the custody was granted upto to 23.06.2022 till 5.00 p.m. It is also submitted that the behaviour of the petitioners from the time they entered the aircraft was suspicious and the same was noticed by the personal security officers of the Hon'ble Chief Minister. Learned Director General of Prosecution further submitted that the investigation is in progress and the custodial interrogation of the petitioners is absolutely necessary to unearth the criminal conspiracy.

7. It is the futher case of the petitioners that provisions of Section 11A of the Aircraft Act are not applicable in the facts of this case in as much as Section 11A of the said Act is about punishment for willful non-compliance with the directions issued under Section 5A of the Act. Section 5A specifically mandates that the Director General of Civil Aviation or any other officer specifically empowered on this behalf by the

Central Government in this regard may issue order or direction in respect of matters specified in Clauses (aa), (b) (c) (e) (f) (g) (ga) (gb) (gc) (h) (i) (m) and (qq) of Sub-section (2) of Section 5 of the Act to any person or persons using any aerodrome or engaging in the aircraft operations, air traffic control, maintenance and operation of aerodrome, communication, navigation, surveillance and air traffic management facilities and safeguarding civil aviation against acts of unlawful interference, in case where the Director General of Civil Aviation or such other officer is satisfied that in the interest of the security of India or for securing the safety of aircraft operation and such direction shall be complied with by the person or persons to whom such direction is issued and it is submitted that a perusal of the same will show that these are essentially directions issued to operators or other persons for securing the safety of aircraft operations. Rule 22 of the Aircraft (Investigation of Accidents and Incidents) Rules, 2017 is also incorporated in the FIR. It is contended that the FIS or the FIR is silent regarding any violation of the said rule whereby the petitioners are liable for penalty mentioned in Rule 22. As regards the alleged violation of Section 3(1) of the Suppression of unlawful Acts against Safety of Civil Aviation Act, 1982 contention of the petitioners is that the said section is not applicable in the facts of the present case in as much as the same is regarding punishment for unlawfully and intentionally committing an act of violence against a person on board of an aircraft, in flight, which is likely to endanger the

safety of such aircraft and contended that the act of violence if any should be likely to endanger the safety of aircraft and that none of the ingredients of the said Section is attracted in the present case. The specific contention of the petitioners is that they are members of a particular political party and they have raised slogans in protest of certain allegations against the Hon'ble Chief Minister and that they have not committed any offence alleged. It is the contention of the counsel for the petitioners that it was they who were physically assaulted and that it is clear from Annexure A1 remand application that they were undergoing treatment at Medical College, Hospital, Thiruvananthapuram and therefore the allegation that the petitioner attempted to attack the security officers and obstructed the performance of their public duty is without any basis and therefore the provisions of Section 332 IPC is also not attracted. It is further contended that since the petitioners are inside an aircraft which is a high-security zone there is no chance for them to carry any weapons for the commission of the offence alleged and that the allegation that they attempted to commit murder is without any basis and therefore the provisions of Section 307 IPC is not attracted. Even though it is stated by the prosecution that the 1st petitioner is involved in 13 cases and that the 2nd petitioner is also involved in crimes, it is the specific case of the counsel for the petitioners that most of these cases are charged when they were involved in political agitations. They have also raised a contention that further custodial interrogation is not required since

Sessions Court has already granted custody of the petitioners.

8. It will be relevant to note the parameters laid down by this court as well as the Apex Court in the matter of granting bail. This court in **Gopinathan pillai & others v. State of kerala, 1969 KLT 841** held thus.

"6. Pre-trial detention has a purpose and policy and, therefore, the issue of bail or jail must be decided on relevant criteria and not on emotionally appealing but legally impertinent circumstances. While deprivation of liberty is a sequel to conviction, antecedent incarceration amounts to punishment without trial, unless justified on some civilized principles bearing on the administration of justice. The infliction of humiliation, the cruelty of jail life and the prejudice suffered by a party in the conduct of his defence do irreparable damage to a man and it is poor comfort to be told that he would be acquitted ultimately if he were really innocent. That is why Courts have to take conscientious care not to be deflected by sentiment or scared by ghastliness but to be guided by the high principle that public justice shall not be thwarted and the course of the trial defeated or delayed by the accused person, be he high or low. This being the perspective, purpose and policy regarding bail, I must agree with counsel for the petitioners that the high death roll, very regrettable though, cannot stampede a Court into refusal of bail and the longer casualty list on the other side cannot weigh against the accused."

The Apex Court in **State of Rajasthan v. Balchand, (1977) 4 SCC 308**, held thus.

"2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who

seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative."

The Apex Court has reiterated the said position in ***P. Chidambaram vs Directorate of Enforcement, (2020) 13 SCC 791*** which held 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.

9. There is no case for the prosecution that the petitioners were carrying any weapon and admittedly petitioners being inside an aircraft, which is a high security zone, there is no possibility for any of the petitioners to carry any weapon also. The investigating agency has no case that the motive for the alleged incident is of any personal enmity and it is the specific contention of the petitioners that the same was part of a political agitation. The petitioners are already arrested on 14.06.2022 and the Sessions Court has also granted custody of the petitioners to the investigating agency. There is no case that any further recovery is to be effected at their instance. If at all any recovery is to be made it is always open for the investigating officer to do that even when the petitioners are on bail. [See paragraph 84 Clause (g) of the decision of the Apex Court in ***Sushila Aggarwal v. State (NCT of Delhi)*** reported in ***2020 (1) KHC 663 (SC)***. Annexure 3 report of the Airport Manager to the Station House Officer, Valiyathura Police Station, which is first in point of time, only says that they were informed that an alleged altercation took place on board

the flight between three passengers who were seated on Seat No. 8A, 8C and 7D. A subsequent report by the Airport Manager dated 14.06.2022 also revealed that after landing as soon as seat belt sign went off, the said passengers immediately stood up from their respective seats and rushed toward the Hon'ble Chief Minister, shouting slogans in the vernacular language and upon seeing this one of the passengers travelling with the Hon'ble Chief Minister intervened.

Considering the nature of the allegations I feel that further custodial interrogation of the petitioners is not necessary, but taking into consideration the contentions raised by the prosecution that the investigation is only in the initial stage and further investigation is to be done to unearth any conspiracy involving other persons, I feel that there should be a direction that the petitioners should co-operate with the investigation. Therefore, I am inclined to grant bail to the petitioner on stringent conditions.

(i) Petitioners shall be released on bail on 24.06.2022 on executing a bond of Rs.50,000/- (Rupees fifty thousand only) each with two solvent sureties each for the like sum to the satisfaction of the jurisdictional court.

(ii) Petitioners shall appear before the investigating officer as and when required and shall co-operate with the investigation.

(iii) Petitioners shall surrender their passport. If they do not have a passport, they shall file an affidavit to that effect before the jurisdictional

court, within a period of one week from the date of release.

(iv) The petitioners shall not attempt to interfere with the investigation or to influence or intimidate any witness in Crime No. 511 of 2022 of Valiyathura Police Station.

(v) Petitioners shall not enter Thiruvanthapuram District till the filing of the charge sheet except to comply with condition No.(ii) or to attend any court proceedings.

(vi) The petitioners shall not involve in any other crime while on bail.

If any of the aforesaid conditions are violated, the investigating officer in Crime No.511 of 2022 of Valiyathura Police Station, may file an application before the jurisdictional court, for cancellation of bail.

It is made clear that it is within the power of the police to investigate the matter and if necessary, effect recoveries on the information if any given by the petitioners, even when the petitioners are on bail. [See paragraph 84 Clause (g) of the decision of the Apex Court in ***Sushila Aggarwal v. State (NCT of Delhi)*** reported in ***2020 (1) KHC 663 (SC)***].

Sd/-

**VIJU ABRAHAM
JUDGE**

