

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

Saturday, the 22<sup>nd</sup> day of January 2022 / 2nd Magha, 1943

BAIL APPL. NO. 248 OF 2022

CRIME NO.6/2022 OF CRIME BRANCH POLICE STATION, ERNAKULAM.

PETITIONERS/ACCUSED 1 TO 3

1. P.GOPALAKRISHNAN ALIAS DILEEP, AGED 53 YEARS, S/O. LATE G.PADMANABHA PILLAI, PADMASAROVARAM, KOTTARAKADAVIL ROAD, ALUVA, ERNAKULAM DISTRICT-683 101
2. P.SIVAKUMAR @ ANOOP, AGED 46 YEARS, S/O. LATE G.PADMANABHA PILLAI, PADMASAROVARAM, VIP LANE, ALUVA -683 101
3. T.N.SURAJ, AGED 52 YEARS, S/O. LATE THANKAPPAN NAIR, APARTMENT NO.9E, TOWER 1,

DD PLATINUM, KATHIKADAVU, ERNAKULAM-682 017

RESPONDENT/STATE AND COMPLAINANT

1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031
2. THE DEPUTY SUPERINTENDENT OF POLICE, CRIME BRANCH, ERNAKULAM-683 104

This Bail application coming on for orders upon perusing the petition and upon hearing the arguments of M/S B.RAMAN PILLAI (SR.), SUJESH MENON V.B., PHILIP T.VARGHESE, THOMAS T.VARGHESE, ACHU SUBHA ABRAHAM, V.T.LITHA, K.R.MONISHA, NITYA R., Advocates for the petitioners and PUBLIC PROSECUTOR for the respondents, the court passed the following:

**BAIL APPL. NO. 248 OF 2022**

**ANNEXURE G: TRUE COPY OF THE COMPLAINT SUBMITTED BY  
MR.P.BALACHANDRA KUMAR TO SHO, NEDUMBASSERY POLICE  
STATION DATED 22.11.2021.**

**ANNEXURE H: TRUE COPY OF THE STATEMENT OF MR.P.BALACHANDRA KUMAR  
DATED 01.01.2022.**

**ANNEXURE I: TRUE COPY OF THE STATEMENT OF MR.P.BALACHANDRA KUMAR  
DATED 03.01.2022.**



**GOPINATH P., JUDGE.**

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**Bail Application Nos.248, 288 & 300 of 2022**  
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**Dated this the 22<sup>nd</sup> day of January, 2022**

**ORDER**

The petitioners in these cases are accused Nos.1 to 5 in Crime No.6/2022 of Crime Branch Police Station, Ernakulam. The said crime has been registered alleging commission of offences under Sections 116, 118, 120B and 506 of the Indian Penal Code r/w. Section 34 of that Code.

2. The said crime was registered based on a complaint of the investigating officer in Crime No.297/2017 of Nedumbassery Police Station, which is now pending trial as S.C.No.118/2018 on the file of the Additional Special Sessions Judge, [CBI Court-III], Ernakulam. The complaint of the investigating officer essentially stems from certain information given by one Balachandra Kumar regarding the accused in this case. Briefly put, the information given by the aforesaid Balachandra Kumar is that owing to animosity arising out of the registration of Crime No.297/2017 where the 1st petitioner in B.A No.248/2022 is the main accused, the petitioners herein had conspired to do away with the investigating officer and other officers connected with Crime No.297/2017. The information given by the aforesaid Balachandra Kumar is stated to be supported by material such as voice clips and videographs which would suggest that the allegations against the accused are correct.

3. Sri. B. Raman Pillai, the learned senior counsel instructed by Sri. Philip T. Varghese for the petitioners would contend, referring to the written

complaint dated 22.11.2021 given by the aforesaid Balachandra Kumar(Annexure-G in B.A.No.248/2022), that even if the entire allegations contained therein are taken into account, the same does not constitute an offence, either of abetment under Sections 116 or 118 of the Indian Penal Code or of criminal conspiracy to commit an offence under Section 302 of the Indian Penal Code (punishable under Section 120B of the Code) as is now suggested by the prosecution. It is also submitted that subsequent statements given by the aforesaid Balachandra Kumar (produced as Annexures- H & I in B.A.No.248/2022) are basically improvements of his earlier complaint. It is also pointed out that it is only in Annexure-I statement that the allegation of a conspiracy to harm the investigating officers in Crime No.297/2017 was made. It is submitted that even if the contents of Annexures-H & I are also taken into account, even then, the offences, as alleged, have not been committed. It is submitted that while the prosecution has every right to investigate into allegations based on the contents of Annexures-G, H and I, the prosecution cannot insist for custody of the petitioners, as at present no offence is made out.

4. Sri. T.A. Shaji, the learned Director General of Prosecution instructed by Sri. P. Narayanan, the learned Senior Public Prosecutor had handed over to me in a sealed cover certain materials collected by the investigating agency which suggest that an in-depth investigation is required into the matter. It would not be appropriate for me to refer to or make any findings concerning those materials as that would be highly improper at this

stage. I have referred to them only to emphasise that a thorough investigation is required into the matter.

5. The learned Director General of Prosecution would vehemently oppose the grant of anticipatory bail or even an interim order of protection. He refers to the judgments of the Supreme Court in ***State Rep. by the C.B.I. v. Anil Sharma; (1997) 7 SCC 187, State of Andhra Pradesh v. Bimal Krishan Kundu and another; (1997) 8 SCC 104, Dr. P.A. Dasthakir v. The Deputy Superintendent of Police, CBCID, EOW-1, Sub Unit, Thrivuananthapuram; 2012 SCC Online Ker 8968, Karayi Rajan & another v. Central Bureau of Investigation; 2012 SCC Online Ker 12215, & P.Chidambaram v. Directorate of Enforcement; 2019 (9) SCC 24*** to contend that in cases where the offence alleged is that of criminal conspiracy, the success of investigation will depend very much on the kind of custody that is available to the prosecution and when the accused are protected by an order of bail or any order of protection from arrest, very often, it would be difficult for the prosecution to prove its case against the accused. He submits regarding the judgement of the Supreme Court in ***R. Venkatkrishnan v. Central Bureau of Investigation; 2009(11) SCC 737*** that a criminal conspiracy is hatched behind closed doors and it is very difficult for the prosecution to get any direct evidence of such conspiracy. It is submitted that only a thorough investigation and a custodial interrogation of the accused will enable the prosecution to get sufficient evidence to establish a conspiracy. It

is submitted that the grant of bail or interim protection would defeat the investigation as the accused are extremely influential. It is submitted that the experience of the prosecution with the earlier case in which the 1<sup>st</sup> petitioner in B.A.No.248/2022 is the main accused has been that every possible effort will be taken by the accused to influence any witnesses and to change the course of the investigation.

6. The learned senior counsel appearing for the petitioners, in reply, refers to the judgment of the Supreme Court in ***Sushila Aggarwal and others v. State (NCT of Delhi) and another; (2020) 5 SCC 1***, and in particular, paragraph 68 thereof to contend that where the accused is protected by an order or anticipatory bail or an interim order protecting him from arrest and where there is a violation of any condition upon which such order is granted, the prosecution is not remediless and recourse can be added to Section 438(2) of Cr.P.C., to apply for cancellation of bail. My attention is also drawn to the judgment of the Supreme Court in ***P. Chindambaram v. Directorate of Enforcement; (2020) 13 SCC 791*** to contend that the Court while considering a bail application must be circumspect in referring to materials handed over by the prosecution in a sealed cover. I must immediately note that the judgment of the Supreme Court in ***P.Chindambaram (supra)*** suggests that while it would be inappropriate for the Court to rely upon and quote from such materials handed over by the prosecution, there is no bar in considering such materials to satisfy the judicial conscience of the Court regarding the

entitlement of the accused to bail.

7. Having heard the learned senior counsel for the petitioners and the learned Director General of Prosecution for the respondents, and having regard to the materials placed on record, I am inclined to pass an interim order as follows:-

i) The petitioners shall not be arrested in connection with Crime No.6/2022 of Crime Branch Police Station, Ernakulam, till 27.1.2022;

ii) The petitioners in these bail applications shall report before the investigating officer in Crime No.6/2022 of Crime Branch Police Station, Ernakulam at 9 a.m. on 23.1.2022, 24.1.2022 & 25.1.2022;

iii) They shall be available for interrogation and such other investigation as may be necessary, from 9.00 A.M till 8 P.M, on the aforesaid dates;

iv) The petitioners shall fully co-operate with the investigation. It is made clear that any attempt to interfere with the course of investigation in any manner, whatsoever, will entail cancellation of this order of protection.

The learned Senior Public Prosecutor is directed to place a report regarding the interrogation of the petitioners and any other materials that may be collected by the prosecution before this Court, on 27.1.2022, in a sealed cover. Post on 27.1.2022 along with B.A.No.476/2022.

sd/-

**GOPINATH P.  
JUDGE**

acd