

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-II,
THIRUVANANTHAPURAM

Present:- Smt. Aneesa A, Judicial I Class Magistrate-II, Thiruvananthapuram

Wednesday the 25th day of May 2022

CMP.350/22

in

Crime No.677/22 of Fort Police Station

: State of Kerala represented by the Assistant Commissioner of Police, Fort Police Station.

(By APP Gr-I, Smt. V.M. Uma)

: P.C. George, S/o.Plathottathil Chacko, Plathottathil House, Aruvithara P.O., Erattupetta-2, Kottayam Dist.,

(By Advocate Sri. Sasthamangalam S. Ajithkumar)

: U/s.153(A) and 295(A) of IPC.

: The petition is allowed and bail granted to the accused in CMP.340/22 in Fort Police Station crime 677/22 is hereby cancelled u/s.437(5) of Cr.PC.

This petition having been heard today the court passed the following:-

ORDER

1. This is a petition filed u/s.437(5) of Cr.PC by the learned Assistant Public Prosecutor.
2. The petition averments as follows:-The present crime No.677/2022 u/s.153(A) and 295(A) IPC registered against Sri.P.C.George, Ex-MLA at the Fort Police Station on 30.4.22. The gist of the case is that while attending a function named 'Ananthapuri Hindu Maha Sammelanam' at Priyadarshini auditorium, Eastfort on 29.4.22, Sri. P.C. George made a speech which was found to be communal and was against all Muslim community. This derogatory speech was found posted at You Tube channel and other social media platforms and found to be spread disharmony or feelings of enmity hatred or ill-will between different religious groups. The accused was arrested and produced before the Magistrate at her residence on 1.5.22 at 12.30 p.m. and

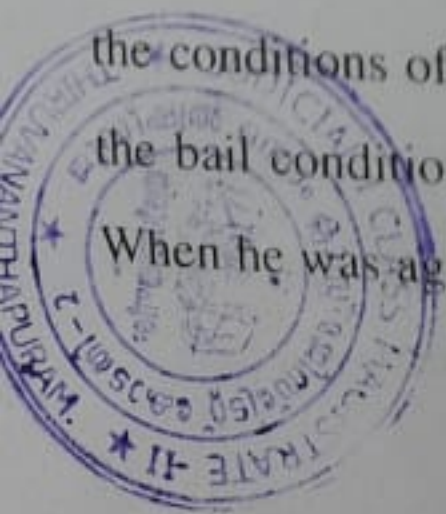


bail was granted to the accused on some conditions, but without hearing the APP. In the said bail order it has been recorded that the Assistant Public Prosecutor was not available. The above observation is not correct in the context. As a matter of fact the time for consideration of bail application filed by accused was not intimated to the APP nor was any copy served in time. The granting of bail was not in tune with the circular vide D1-25683/65 dated 9 November 1965 of Hon'ble High Court of Kerala. The present application is filed seeking invocation power of this court u/s.437(5) of Cr.PC to cancel the bail granted to the accused and direct the accused be arrested and commit him to custody on subsequent conduct of the accused including violation of bail conditions.

3. It is also stated in the petition that soon after the accused released on bail by the court he addressed the visual media in front of Judicial officers quarters, Vanchiyoor and stated that he is still sticking on what he stated in the speech and was justifying the same which amounts to repetition of the same crime and spreading criminal hatred further. Thereafter also he is continuously attending public meetings and making speeches in similar tone, attracting the very same offence which is registered against him and receive receptions from various organizations which have grabbed the opportunity which is clear violation of the 4th condition of the bail order dated 1.5.22 which reads as follows "The accused is directed not to make and propagate controversy statements which may hurt the religious sentiments of others while on bail." It is stated that the conduct of the accused subsequent to the grant of bail is in sheer violation of the bail condition and therefore the bail granted to him is liable to be cancelled u/s.437(5) of Cr.PC on that ground alone. Substantiating the contentions stated in the petition the decisions of *Hon'ble High Court of Kerala in Jeri Cherian v. State of Kerala (2019 (1) KHC 133)*, *Latheef @ Abdul Latheef v. State of*

Kerala [2011(2) KHC 394], Nowshad v. State of Kerala and another [2016(1) KHC 119] were also quoted in the petition. It is stated that taking note of the totality of the facts and circumstances of the case particularly with respect to the subsequent conduct of the accused after release on bail, it is a fit case for invocation of the power of this court u/s.437(5) of Cr.PC to cancel the bail granted to the accused and direct him to be arrested and commit him to custody.

It is stated in the objection filed by the learned counsel for accused that the application filed by the police to cancel the bail of the accused is unsustainable because there is no violation of any of the conditions for bail. The law on the field is clearly stated by the Apex court in *State v. Sanjay Gandhi reported in 1978 (2) SCC 411*. The ground for cancellation as stated in para 5 is that the accused stated that he is still maintaining the stand and therefore the said statement is violative of 4th condition of the bail order. The stand taken by the police is incorrect. The 4th condition in the bail order is not to make and propagate controversial statement which may hurt the religious sentiments of others and therefore it is stated that if there is no explicit and intentional violation of the said condition, there is absolutely no scope for cancellation of bail on the ground of violation of bail condition. The statement of accused before the media in front of the Judicial Officers quarters, Vanchiyoor is what is pointed out by the police as condition violation Act. The statement of the accused is that he is sticking on to what he already said and that statement per say is not a propagation of any controversial statement that hurts the religious sentiments of others. Instead, what the accused stated is that he is bound by the conditions of the bail order and that he has a duty to scrupulously observe the bail conditions and he doesn't want to make any statements to the media. When he was again confronted by the media what he said was that the media is



pushing the mike into his mouth and compel him to make statements to satisfy the sensation hungry pressmen and that he does not intent to fall into the trap

Then he explained what he spoke about Mr.M.A. Yusef Ali and said that mal business like reliance and Yusef Ali results in capitalist monopolies and if they are allowed to operate in the retail space that will eat into the business of the small retailers and ultimately will lead them to shut the shop resulting the business loss to many and lack of employment, and therefore, the quintessence of the statement of the accused was explanatory to the effect that he has not made any statement to incite religions or to harm the religious sentiments of any and he doesn't intent to do so. If that be the facts of the case, there is absolutely no bail condition violation and therefore this petition may be dismissed.

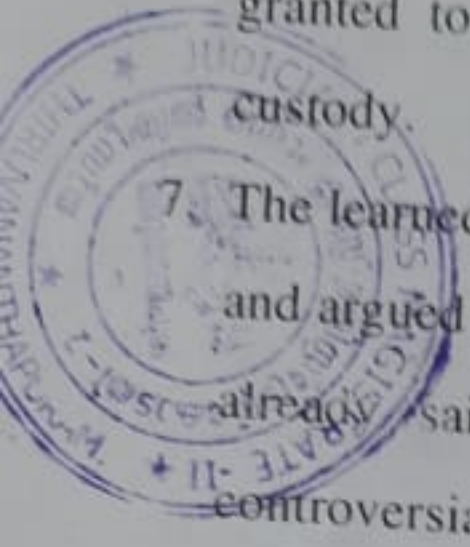
5. It is also stated in the objection that the police have filed the petition to cancel bail only because of the by election at Thrikkakkara because if the accused is some how arrested or his bail is cancelled, the Government intent to gather the vote bank of a community. So, the object of the petition to cancel the bail is not propelled by fair motives to prevent the commission of a crime but to subserve a political objective and therefore the application is malafide. Besides, the police have fabricated a false FIR against the accused alleging the commission of the same offences with a view to make a ground that accused violated the bail conditions by recommission of the offence and it is done in order to create an artificial ground for cancellation of bail in this case and not a bonafide act. The accused asserts that there is no recommission of any offence and that FIR is the subject matter of proceedings in another court and hence is not relevant in this matter. It is clear that this FIR was not there when the application for cancellation was drafted but it is only cooked up to re-arrest the accused and make a ground for cancellation of bail. So the entire exercise is



malafide. Hence it is stated the bail cancellation petition filed by may be dismissed.

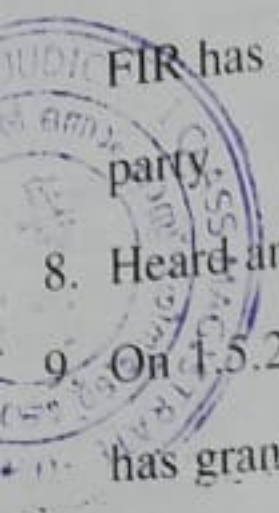
The learned APP pointed out her contentions in the petition and argued that without hearing the learned APP this court has granted bail to the accused and that is a clear violation of the circular of Hon'ble High Court of Kerala D1.25683/65 dated 9th November 1965. She contented that soon after the release of the accused in this case by this court he addressed the visual media in front of the Judicial officers quarters, Vanchiyoor and stated that he is still sticking on what he stated in the speech and justifying the same which amounts to repetition of the same crime and spreading criminal hatred further. Thereafter also he is continuously attending public meetings and making speeches in similar tone attracting the very same offence, which is a clear violation of the 4th bail condition of the bail order dated 1.5.22. She has produced a copy of FIR in Palarivattom Police Station Crime No.487/2022 and submitted that within 10 days after the release of the accused he made a speech at Vennala Thykavu Sree Mahadeva Temple containing highly provocative remarks which are capable of promoting disharmony, hatred and ill-will between different religious groups on the ground of religion. She pointed out that this is a clear violation of the 4th bail condition. The learned APP also submitted that the CDs containing the above speeches is produced by the investigating officer before the court. She demanded for viewing the CD before court. Further argued that the object of section 437(5) of the code is to enable the court on sufficient material being placed before it to cancel the bail granted or to direct that such persons being arrested and committed to custody. In order to substantiate her contention she has placed the dictum of Hon'ble High Court of Kerala in *Jeri Cheriyan v. State of Kerala reported in 2019(1) KHC 133*. She also placed the decisions of Hon'ble High Court of Kerala in

Latheef @ Abdul Latheef v. State of Kerala 2011(2) KHC 394 and Nowshir v. State Kerala and another (2016(1) KHC 119). She submitted that taking note of the totality of the facts and circumstances of the case particularly with respect to the subsequent conduct of accused after release on bail it is a fit case for invocation of the power of this court u/s.437(5) of Cr.PC to cancel the bail granted to the accused and direct him to be arrested and commit him to custody.



7. The learned counsel for the accused pointed out his contentions in his objection and argued that the statement of the accused is that he is sticking on to what he has already said and that statement per se is not a propagation of a controversial statement that hurts religious sentiments of others. The object of the petition to cancel the bail is not propelled by fair motives to prevent the commission of crime but to subserve a political object and therefore the application is malafide. He contended that police have again fabricated a false FIR against the accused alleging commission of the same offence with a view to make a ground that the accused violated the bail condition by re-commissioning of the offence and it is done in order to make an artificial ground for cancellation of bail in this case. The FIR is registered after filing this petition for cancellation of bail. Hence it is only a cooked up one for re-arresting the accused. He contended that the cancellation of bail necessarily involves the review of a decision already made and can be and largely permitted only if by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. In order to substantiate his contentions he has placed the decision of Hon'ble Apex Court in *State (Delhi Administration) v. Sanjay Gandhi reported in 1978 KHC 531*. He has also placed the decision of Hon'ble Apex court in *X v. State of Telungana and another reported in 2018 KHC 6439*. He contended that even

if the entire allegations levelled against the accused in Palarivattom Crime are admitted, the ingredients of the offences alleged are not made out. Further submitted that the subsequent registration of FIR is the violation of the right of the accused to express his opinion freely without any fear, that is the violation of article 19 of Indian Constitution. It is also submitted that the subsequent FIR has been registered against the accused due to political rivalry of the ruling party.



8. Heard and perused the records.

9. On 1.5.22 in CMP.340/22 in crime no.677/22 of Fort Police Station, this court has granted bail to the accused on conditions. As per the 4th bail condition it is

stated that "The accused is directed not to make and propagate controversy statement which may hurt the religious sentiments of others while on bail."

According to the prosecution, the accused violated the 4th bail condition by continuously making speeches in similar tone attracting the very same offence registered against him. The learned APP at first pointed out that this court has granted bail to the accused without hearing the prosecution and in violation of the circular vide D1-25683/65 dated 9th November 1965 of Hon'ble High Court of Kerala. Consideration of that contention of learned APP will amount to review of the earlier order passed by this court. Moreover, that contention is not comes under the purview of section 437(5) of Cr.PC. Hence no discussion is warranted with respect to that point. The learned APP also pointed out that soon after the accused was released on bail by this court he addressed the visual media in front of judicial officers quarters, Vanchiyoor and stated that he is still sticking on what he stated in his speech which resulted in the registration of the crime. The said statement of the accused cannot be considered as a violation of the 4th bail condition as the said statement per say is not a propagation of any controversial statement which may hurt the

religious sentiments of others. In that speech the accused has not clearly specified the statements to which he is sticking on. Secondly, the learned APP pointed out that on 8.5.22 the accused had made a speech at Vennala Thykavu Sree Mahadeva Temple containing highly provocative remarks which are capable of promoting disharmony, hatred and ill-will between different religious groups on the ground of religion. The investigating officer has produced a CD containing the said alleged speech of accused. A certification u/s.65(B) of Indian Evidence Act from the Inspector of Police, Cyber police Station, Thiruvananthapuram City is also produced stating that the soft copy is obtained from his official computer and also certifying the accuracy of the contents of the computer out put. The learned APP demanded for playing the CD before the court as it contains the alleged subsequent speech of accused at Vennala Sree Mahadeva Temple. The learned counsel for the accused not objected the demand of the learned APP. Hence the said CD is played before the court in the presence of learned APP and Advocate Ismail who is attached to the office of learned counsel for the accused. The CD contained the video clipping of the above mentioned alleged speech of the accused at Vennala Sree Mahadeva Temple, which was telecasted in an online channel WWW.Thecrimeonline.com. The learned counsel who represented the accused while watching the video objected the authenticity of the above CD as it is only a soft copy of the alleged speech circulating in online channels. He raised a contention that it is an edited and tampered video. Since it is a video clip of the alleged speech of the accused which is circulating through You Tube channels and it is downloaded and prepared as a soft copy from an official computer its authenticity cannot be determined at this stage. Court is also opinion that there may be chance for editing or tampering. From the side of prosecution the FIR registered against the accused in Palarivattom Police

Station crime 487/22 is also produced. A transcript of the alleged admitted speech of the accused at the Vennala Sree Mahadeva Temple was produced by the learned counsel for the accused along with a memo. The transcript of the alleged admitted speech of the accused is an exact replica of the alleged speech contained in the CD produced by the prosecution. On going through the above transcript of the speech, it is seen that even though the earlier parts of the speech are said to be a part of the explanation of the accused for his earlier speech made in this crime, in the following portions of the speech, it is seen that there are highly provocative remarks contained in it, which are capable of promoting disharmony, hatred and ill-will between different religious groups on the ground of religion. There are also other indications in the above speech that almost all criminals who indulge in the offences related to land mafia, terrorism, hawala business, narcotic transactions and smuggling of gold belonged to Muslim Community. It is further stated that the girls belongs to Hindu and Christian communities are being corrupted by adopting love Jihad by Muslims. The accused is also seen to have stated that the exponential hike in Muslim population has to be countered by the women community of Hindus and Christians by giving birth to at least four children. Another remark made by the accused in the above speech is that it is not possible for a Hindu to conduct a shop in an area surrounded by Muslim community, whereas a Muslim could very well conduct such a shop in an area surrounded by Hindu community. There are also various other comments in the above speech depicting the members of the Muslim community in bad light. The said speech made by the accused can be considered as a violation of the 4th bail condition as it is such a nature to promote disharmony, hatred and ill-will between the persons belonging to Muslim Community and the followers of two other prominent religions of our State. The contention of the learned defence


ounsel that the subsequent FIR is registered in violation of the freedom of speech and expression of the accused is not sustainable here. The accused is released on bail in this case subject to the conditions that he shall not make and propagate controversial statement which may hurt the religious sentiments of others. But within ten days after his release he has made this speech with the deliberate and malicious intention of outraging the religious feelings of a class of citizens, which is a clear violation of the 4th bail condition in CMP.340/22. The accused has misused the concession granted to him by not following the terms agreed while he is released on bail. The learned counsel for the accused contended that if bail is once granted it can be cancelled only in supervening situations. It is well settled principle that misuse of the concession granted to the accused by not following the terms agreed while out on bail can be considered as one of the supervening factors that may justify the cancellation of the bail. Considering the above circumstances the bail granted to the accused in CMP.340/22 in Fort Police Station crime 677/22 is hereby cancelled. The investigating officer is at liberty to arrest and produce the accused before court.

In the result, the petition is allowed and bail granted to the accused in CMP.340/22 in Fort Police Station crime 677/22 is hereby cancelled u/s.437(5) of Cr.PC.

ated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced by me in open court on this the 25th day of May 2022.

J
Judicial I Class Magistrate
Thiruvananthapuram




Senior Superintendent
Judicial I Class Magistrate Court
Thiruvananthapuram