



2023:KER:40438

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 19TH DAY OF JULY 2023 / 28TH ASHADHA, 1945

WP(C) NO. 23279 OF 2023

PETITIONER:

SHAJAN SKARIAH
AGED 51 YEARS
S/O SCARIA, RESIDING AT NO 14,
HIGH LAND PARK,
MLA ROAD, KUDAPPANAKKUNNU,
THIRUVANANTHAPURAM,
KERALA, PIN - 695043

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
PRERITH PHILIP JOSEPH
ANILKUMAR C.R.

RESPONDENTS:

- 1 STATE OF KERALA
REP. BY CHIEF SECRETARY, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM DISTRICT, PIN - 695001
- 2 HOME SECRETARY
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 3 STATE POLICE CHIEF/DIRECTOR GENERAL OF POLICE
POLICE HEADQUARTERS, THIRUVANANTHAPURAM, PIN - 695001
- 4 ADDITIONAL DIRECTOR GENERAL OF POLICE
CRIME BRANCH, POLICE HEADQUARTERS,
THIRUVANANTHAPURAM, PIN - 695001
- 5 STATION HOUSE OFFICER
CYBER POLICE STATION, THIRUVANANTHAPURAM,
PIN - 695033



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SRI.T A SHAJI, DGP

SRI. P NARAYANAN, PP

SRI.RAJEEV JYOTHISH GEORGE, PP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 19.07.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



P.V.KUNHIKRISHNAN, J.

W.P.(C)No.23279 of 2023

Dated this the 19th day of July, 2023

JUDGMENT

The above writ petition is filed with the following prayers:

"i. Issue a writ of mandamus directing the respondent No. 3 to give directions to his subordinate officers to not to arrest the petitioner without giving sufficient opportunity to explain his stand and without complying the directions issued by the Hon'ble Apex Court in the decision reported in Satender Kumar Antil vs Central Bureau of Investigation and Ors reported in (2022) 10 SCC 51.

ii. To issue writ of mandamus directing the 3rd respondent to issue necessary directions to his subordinate officers to not to arrest the petitioner without issuing notice under Section



41A CrPC.

iii. To issue writ of mandamus directing the 2nd respondent to issue necessary directions as contemplated in the decision Satender Kumar Antil vs Central Bureau of Investigation and Ors reported in (2022) 10 SCC 51.

iv. To issue any other writ or direction this Hon'ble Court deems fit on the facts of the case."[SIC]

2. When this writ petition came up for consideration, this Court brought to the notice of the counsel appearing for the petitioner that, certain allegations are made against a Member of Legislative Assembly and he is not impleaded in this case and therefore, this Court will not entertain this writ petition. At this stage, the counsel appearing for the petitioner submitted that, he is not pressing those allegations in the writ petition.



3. The main prayer in this writ petition is to issue a direction to the 3rd respondent to give direction to his subordinate officers, not to arrest the petitioner without giving sufficient opportunity to explain his stand and without complying the directions issued by the Hon'ble Apex Court in **Satender Kumar Antil vs. Central Bureau of Investigation and others** [2022 (10) SCC 51]. The second prayer is to issue appropriate direction to the 3rd respondent to instruct his subordinate officers not to arrest the petitioner without issuing notice under Section 41A Cr.P.C. The third prayer is to issue a direction to the 2nd respondent to issue necessary directions as contemplated in **Satender Kumar's** case (supra).

4. Heard the learned counsel appearing for



the petitioner and Adv.T.A.Shaji, learned Director General of Prosecution (DGP).

5. Counsel appearing for the petitioner reiterated the contentions raised in this writ petition. The counsel submitted that the petitioner approached the Apex Court against the order passed by this Court in a bail application in Crime No.899/2023 of Elamakkara Police Station and the Apex Court directed, not to arrest the petitioner for a period of two weeks. It is the case of the petitioner that, he got information that more than 107 cases are registered against him all over the State and the petitioner is not aware of the crime numbers and the offences alleged in those cases. It is submitted that the petitioner is not in a position to approach the competent court to avail



his legal remedies. The counsel appearing for the petitioner submitted that there may be a direction to issue notice under Section 41A Cr.P.C. before taking any coercive steps. The DGP seriously opposed the above submission. The DGP submitted that, such a general order may not be issued by this Court and that will create problem to the investigating officers. The DGP also submitted that, if notice under Section 41A Cr.P.C. is issued, there will be problem in arresting the petitioner in appropriate cases.

6. This Court considered the contentions raised by the petitioner and the respondents. I don't want to make any observation about the merit of the cases registered against the petitioner. I make it clear that, if any case is registered



against the petitioner by the police authorities, the Investigating officers concerned are free to proceed in accordance with law. The counsel appearing for the petitioner and the DGP submitted that, in one case the petitioner already approached this Court by filing a bail application and that bail application is pending as B.A.No.5829/2023. The main grievance of the petitioner is that, he is not aware of the case numbers and the offences alleged against him and therefore, he is not in a position to approach a court of law with an application for bail. I think there is some force in this argument. The petitioner says that, more than 107 cases are registered against him. The petitioner is not aware of the offences alleged against him in those cases



and even the crime numbers and police stations. If that be the case, I am of the considered opinion that, in the peculiar facts and circumstances of this case, there can be a direction to the Investigating officers in the cases registered against the petitioner as on today, to issue notice under Section 41A Cr.P.C. or a notice informing that a case is registered against the petitioner with non bailable offences. This can be done within ten days from today. The petitioner shall give the address where he will be available and also his personal E-mail address to the 3rd respondent. After issuing notice, if the period mentioned in the notice is over, the Investigating officer can proceed in accordance with law.

Therefore, this writ petition is disposed of in



the following manner:

i. Petitioner shall furnish the address where he will be available and his personal E-mail address also to the 3rd respondent, within two days from today.

ii. The 3rd respondent or his subordinate officers can issue notice either under Section 41A Cr.P.C or a notice informing that, non bailable offence is registered against the petitioner in the police station concerned, after giving ten days time to the petitioner.

iii. After ten days, the Investigating officer can proceed in accordance with law.

iv. This order is not applicable to the case in which the petitioner already filed B.A.No.5829/2023.



v. I make it clear that, this order need not be treated as a precedent to any other cases and this order is passed in the peculiar facts and circumstances of this case.

DM

Sd/-
P.V.KUNHIKRISHNAN
JUDGE



APPENDIX OF WP (C) 23279/2023

PETITIONER EXHIBITS

- EXHIBIT-P1 A TRUE COPY OF THE FIR IN CRIME NO
702/2023 OF NILAMBUR POLICE STATION,
MALAPPURAM
- EXHIBIT-P2 A COPY OF THE FACEBOOK POST DATED
06.07.2023
- EXHIBIT-P3 A COPY OF THE JUDGMENT IN D.K. BASU
VS STATE OF WEST BENGAL REPORTED IN
AIR 1997 SC 610
- EXHIBIT-P4 A COPY OF THE JUDGMENT IN ARNESH
KUMAR V STATE OF BIHAR REPORTED IN
(2014) 8 SCC 273
- EXHIBIT-P5 A COPY OF THE JUDGMENT REPORTED IN
SATENDER KUMAR ANTIL VS CENTRAL
BUREAU OF INVESTIGATION AND ORS DATED
11.07.2022 REPORTED IN (2022) 10 SCC
51
- EXHIBIT-P6 A COPY OF THE JUDGMENT DATED
21.03.2023 IN SATENDER KUMAR ANTIL VS
CENTRAL BUREAU OF INVESTIGATION AND
ORS REPORTED IN 2023 LIVELAW (SC) 233
- EXHIBIT-P7 A TRUE COPY OF THE COMPLAINT DATED
13.06.2023 SUBMITTED TO THE STATION
HOUSE OFFICER, CYBER POLICE STATION
- EXHIBIT-P8 THE TRUE COPY OF THE TRANSCRIPT OF
THE PROGRAM AIRED IN YOUTUBE

RESPONDENTS EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE