

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 23<sup>RD</sup> DAY OF MAY 2023 / 2ND JYAISHTA, 1945

BAIL APPL. NO. 7834 OF 2022

CRIME NO.494/2022 OF THAMARASSERY POLICE STATION, KOZHIKODE

PETITIONER/ACCUSED NO.2:

NIYASALI

AGED 37 YEARS

NALAKATH HOUSE, THURAKKAL NARUKARA P.O, NARUKARA  
VILLAGE MANJERI, POOKOTTUR, MALAPPURAM DISTRICT, PIN -  
676122

BY ADVS.

RAJESH KUMAR T.K

MANOJ V GEORGE(D/1527/2004)

T.N.BINDU(B-202)

ASWIN K.R.(K/101/2021)

MATHEWS BENNY(K/001194/2021)

KEERTHANA.V(K/1968/2019)

THUSHARA PAIILY(K/001198/2000)

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA  
THROUGH STATION HOUSE OFFICER  
THAMARASSERY POLICE STATION, KOZHIKODE RURAL  
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM, PIN - 682031
- 2 MANAGER  
KSFE, ATRIUM MALL, KAKAVAYAL ROAD,  
NEAR BUS STAND, PUDUPPADI P.O.,  
ENGAPUZHA BRANCH, CALICUT, PIN - 673586  
BY ADV PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
23.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**P.V.KUNHIKRISHNAN, J.**

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**B.A.No. 7834 of 2022**

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**Dated this the 23<sup>rd</sup> day of May, 2023**

**ORDER**

This Bail application is filed under Section 438 of Criminal Procedure Code.

2. The petitioner is the accused in Crime No. 494 of 2022 of Thamarassery Police Station. When this bail application was filed, this Court passed an interim order not to arrest the petitioner. The learned counsel for the petitioner on 22.05.2023 mentioned before this Court that, when the interim order is in force, the petitioner was arrested by the Station House Officer, Thamarassery Police Station. Therefore, this Court passed the following order on 22.05.2023.

“ It is submitted that when there is an interim order from this Court to the effect that the petitioner shall not be arrested,

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he was arrested violating the order. Station House Officer, Thamarassery will appear in person before this Court on 23.05.2023 at 1.45 p.m.

Issue a copy of this order today itself to the Public Prosecutor for communicating the same to the officer concerned.

Post on 23.05.2023 at 1.45 p.m. along with IA No. 1/2023.”

3. Today Station House Officer, Thamarassery appeared in person. The Station House Officer Submitted that, he committed a mistake in arresting the petitioner and he prayed for indulgence.

4. The learned counsel for the de facto complainant/2<sup>nd</sup> respondent submitted that, there is no interim order restraining the arrest as on the date of arrest. The petitioner was arrested on 29.04.2023. When the bail application came up for consideration on 22.12.2022, this Court passed the following order.

“ Post on 16.01.2023. Interim order is extended till then.”

5. There was no posting on 16.01.2023. The learned counsel for the petitioner not mentioned to the court about this mistake on posting the case on 16.01.2023 by the Registry. Thereafter, the petitioner was arrested. I see no reason to take any action against the Station House Officer. But, it is conceded by the Station House Officer that, he has not verified with the office of the prosecutor before arresting the accused. Admittedly, the bail application is pending before this Court. It is the duty of every Police Officer to contact the office of the prosecutor before arresting an accused, when a bail application is pending before a court of law to verify whether there is any interim order passed by the Court. Without verifying the same from the office of the prosecutor, it is not proper on the part of the Police Officer to arrest an accused when an interim order is in force. Registry will forward a copy of this order to the State Police Chief. The State Police

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Chief will issue appropriate directions to all the police stations in this regard.

6. Now this bail application is infructuous. The bail application is filed under Section 438 of Cr.P.C and the petitioner is already arrested. The petitioner is free to file appropriate application before the jurisdictional court under Section 439 of Cr.P.C. If such an application is filed, the jurisdictional court will consider the bail application in the light of the fact that there was an interim order passed by this Court.

With the above observations, this bail application is disposed of.

**Sd/-**

**P.V.KUNHIKRISHNAN,  
JUDGE**

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APPENDIX OF BAIL APPL. 7834/2022

**PETITIONER ANNEXURES :**

- Annexure A1**            **THE TRUE COPY OF THE ORDER IN B.A. NO. 7386/2022 ON THE FILE OF THIS HON'BLE HIGH COURT OF KERALA DT. 23/9/2022**
- Annexure A2**            **THE TRUE COPY OF THE ORDER IN B.A. NO. 7371/2022**
- Annexure A3**            **THE TRUE COPY OF THE REMAND REPORT OF MR. SHAJAHAN**
- Annexure A4**            **THE TRUE COPY OF THE ORDER IN C.M.P. NO. 2174/2022 IN CRIME NO. 430/2022**
- Annexure A5**            **THE TRUE COPY OF THE ORDER IN B.A. NO. 7389/2022 ON THE FILE OF THIS HON'BLE HIGH COURT OF KERALA DT. 23/9/2022**
- Annexure A6**            **THE TRUE COPY OF THE FIR IN CRIME NO. 494/2022 ON THE FILE OF THAMARASSERY POLICE STATION DT. 1/9/2022**
- ANNEXURE A7**            **INTERIM ORDER DATED 06/12/2022 PASSED BY THIS HON'BLE COURT**

**// True Copy // PA To Judge**