CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 21ST DAY OF FEBRUARY 2025 / 2ND PHALGUNA, 1946

BAIL APPL. NO. 1874 OF 2025

CRIME NO.49/2025 OF ERATTUPETTAH POLICE STATION, KOTTAYAM

PETITIONER(S)/ACCUSED:

P.C. GEORGE
AGED 74 YEARS
S/O. CHACKOCHAN, PLATHOTTAM HOUSE, ARUVITHARA
P.O, ERATTUPETTA VILLAGE, KOTTAYAM, PIN - 686122

BY ADVS.
SRUTHY N. BHAT
P.M.RAFIQ
AJEESH K.SASI
M.REVIKRISHNAN
RAHUL SUNIL
SRUTHY K.K
SOHAIL AHAMMED HARRIS P.P.
NANDITHA S.
AARON ZACHARIAS BENNY
K.ARAVIND MENON
SRI.P.VIJAYABHANU, SENIOR

RESPONDENT(S)/COMPLAINANT:

1 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031

2 **MUHAMMED SHIHAB**
S/O SAIDUMUHAMMAD KATTANAL, ERATTUPETTAH NADAKKAL PO, KOTTAYAM (IS IMPLEADED AS ADDL. 2ND RESPONDENT VIDE ORDER DATED 19-02-25 IN CRL MA 1/25)

BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
S.RAJEEV
DIRECTOR GENERAL OF PROSECUTION(AG-10)
SHRI.P.NARAYANAN, SPL. G.P. TO DGP AND ADDL. P.P.
SHRI.SAJJU.S., SENIOR G.P.
V.VINAY
M.S.ANEER
SARATH K.P.
K.S.KIRAN KRISHNAN
ANILKUMAR C.R.
DIPA V.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19.02.2025, THE COURT ON 21.02.2025 DELIVERED THE FOLLOWING:

"CR"

P.V.KUNHIKRISHNAN, J

B.A.No.1874 of 2025

Dated this the 21st day of February, 2025

O R D E R

If custodial interrogation of an accused is not necessary in connection with the investigation of a case, can a court of law grant anticipatory bail in all cases? If the maximum punishment that can be imposed for the offence alleged in a case is below seven years, whether a court of law can grant bail to an accused in a case without considering the allegation against the accused and the antecedents of the accused? These are the questions to be decided in this case.

2. The petitioner is an accused in Crime No.49/2025 of Erattupettah Police Station, Kottayam District. The above case is registered against the petitioner alleging offences punishable under Sections 196(1)(a) and 299 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') and also under Section 120(o)

of the Kerala Police Act, 2011 (for short 'KP Act').

3. The case is registered in connection with a Channel discussion on Janam TV in which the petitioner also participated. Petitioner is a former Member of the Legislative Assembly (MLA) of Poonjar Constituency. On 05.01.2025, from the residence of the petitioner, he made a statement in the channel discussion. It is extracted in the statement filed by the investigating officer, which is like this: **"All Muslims in India are terrorists and communalists, not a single non-terrorist Muslim lives in India, Muslims are looters who plunder the country's wealth. Lakhs of Hindus and Christians have been slaughtered by Muslims to create a Muslim state. All Indian Muslims should go to Pakistan. All Muslims are communal demons and scoundrels."** Based on the above statement in a live telecast discussion on Janam TV, the 2nd respondent herein filed a complaint, and based on the same, the above crime is registered. The petitioner apprehends arrest in the above case. Hence this bail application is filed.

4. Heard learned Senior Counsel, Adv. P. Vijayabhanu assisted by Adv. Sruthy N. Bhat, for the petitioner, Adv. P. Narayanan, the learned Special Public Prosecutor for the State and Adv. S. Rajeev, the learned counsel appearing for the 2nd respondent, defacto complainant.

5. The learned Senior Counsel, Adv. P. Vijayabhanu argued the matter in detail. The Senior Counsel submitted that the petitioner is a senior politician in the State and he is aged 74 years. The Senior Counsel submitted that the incident took place during a channel debate in which the co-panelist being fully aware of the temperament of the petitioner, provoked and insinuated him, at the end of which the petitioner on a slip of the tongue and in the heat of the moment ended up saying the statement which resulted in the registration of the above crime. The Senior Counsel submitted that the petitioner is a senior politician in the State and has been representing the Poonjar Constituency continuously for about 30 years. The Senior Counsel submitted that the nature and temperament of the petitioner are well-known to all Keralites. The Senior Counsel

submitted that, even if the petitioner made such a spontaneous reaction, the people in the State would take it lightly. It is also submitted by the Senior Counsel that, immediately after the debate, the petitioner published a Facebook post in which he submitted an apology for making such a statement. The Senior Counsel submitted on behalf of the petitioner an unconditional apology for making such a statement and reiterated that it was a slip of the tongue. The Senior Counsel also submitted that the maximum punishment that can be imposed for the offences alleged is three years imprisonment or fine or with both. The Senior Counsel relied on the judgment of the Apex Court in **Arnesh Kumar v. State of Bihar and Another** [2014 (8) SCC 273] and submitted that the custodial interrogation of the petitioner is not necessary. The Senior Counsel submitted that the petitioner is ready to abide any conditions if this Court grant him bail.

6. Adv. P. Narayanan, the Public Prosecutor and Adv. S. Rajeev, who appeared for the defacto complainant seriously opposed the bail application. The Public Prosecutor submitted

that there are criminal antecedents to the petitioner and the petitioner is involved in Crime No.167/2003 of Kidangoor Police Station, Crime No.349/2017 of Museum Police Station, Crime No.67/2018 of Pala Police Station, Crime No.1488/2018 of Kottayam West Police Station, Crime No.677/2022 of Fort Police Station and Crime No.487/2022 of Palarivattom Police Station. The Senior Public Prosecutor submitted that, this is a case in which the petitioner flouted the directions issued by this Court in an earlier bail order. In violation of the conditions imposed in the earlier bail order, the present statement is being made. The Public Prosecutor submitted that, if this Court takes this lightly, a wrong message will go to society, that anybody can make any statement and thereafter they can give an apology. The Public Prosecutor took me through the averments in the FIR registered against the petitioner earlier and also the bail order passed by the learned Magistrate and this Court earlier. Adv. S. Rajeev also reiterated the above contentions. Adv. S. Rajeev submitted that the statement made by the petitioner will attract the offences alleged and this Court may not

entertain this bail application.

7. In reply to the contentions of the Public Prosecutor, the Senior Counsel, Adv. P. Vijayabhanu took me through the conditions imposed by this Court in the earlier bail order. The Senior Counsel submitted that this Court only stated that the petitioner shall not make any speech or statement which would tend to result in the commission of offences under Sections 153A or 295A of the Indian Penal Code. The Senior Counsel submitted that it is not a speech or a statement. The petitioner was only participating in a debate in a channel discussion. Therefore, there is no violation of the conditions imposed by this Court. The Senior Counsel also submitted that, even if the words used by the petitioner are accepted in toto, the offences alleged are not attracted. The Senior Counsel relied on the judgment of the Apex Court in **Javed Ahmad Hajam v. State of Maharashtra and Ors.** [2024 (4) SCC 156], **Balwant Singh & Anr. v. State of Punjab** [AIR 1995 SC 1785], **Manzar Sayeed Khan & Anr. v. State of Maharashtra & Ors.** [AIR 2007 SC 2074] and also **Bilal Ahmed Kaloo v.**

State of Andhra Pradesh [AIR 1997 SC 3483].

8. This Court considered the contentions of the petitioner and the respondents. This is a case in which the offences alleged against the petitioner are under Sections 196(1)(a) and 299 of the BNS and also under Section 120(o) of the KP Act. Section 196(1)(a) of the BNS deals with promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to the maintenance of harmony. Section 299 of the BNS says about deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs. Section 120(o) of the K.P. Act says that, if any person causing, through any means of communication, a nuisance of himself to any person by repeated or undesirable or anonymous call, letter, writing, message, e-mail or through a messenger, is punishable with imprisonment, which may extend to one year or with fine which may extend to five thousand rupees or with both.

9. Before coming to the facts of this case, I am forced

to consider the criminal antecedents of the petitioner which is narrated by the Public Prosecutor. The petitioner is an accused in Crime No.677/2022 of Fort Police Station, Thiruvananthapuram and that case was registered on 30.04.2022 alleging an offence punishable under Section 153A of the Indian Penal Code which corresponds to Section 196 of the BNS. That was a case registered based on a speech by the petitioner in 'Ananathapuri Hindhu Maha Sammelanam' held at Thiruvananthapuram. It will be better to extract the relevant portion of the above FIR:

> “xxxxxx ഇന്ത്യ എന്ന ഹിന്ദുസ്ഥാനെ എത്രയും പെട്ടെന്ന് ഹിന്ദു രാഷ്ട്രമായി പ്രഖ്യാപിക്കണമെന്നും മുസ്ലീങ്ങൾ അവരുടെ ഹോട്ടലുകളിലും മറ്റും വരുന്ന ഇതര മതസ്ഥർക്ക് വന്ധ്യത വരുത്തുന്നതിനുള്ള തുള്ളിമരുന്ന ആഹാരപദാർത്ഥങ്ങളിൽ ചേർത്ത് നൽകുന്നതായും മുസ്ലിങ്ങൾ ഇന്ത്യ മഹാരാജ്യം പിടിച്ചടക്കാൻ ശ്രമിക്കുന്നതായും അവരുടെ ജനസംഖ്യ വർദ്ധിപ്പിച്ച് മുസ്ലീം രാജ്യമാക്കാൻ ശ്രമിക്കുന്നതായും മുസ്ലിം പുരോഹിതർ ഭക്ഷണത്തിൽ മൂന്ന പ്രാവശ്യം തുപ്പിയശേഷം വിതരണം ചെയ്യുന്നതായും മുസ്ലീങ്ങൾ ഹിന്ദുക്കളുടെ പണം

തട്ടിയെടുക്കുന്നതിനുവേണ്ടി നടത്തുന്ന മാളുകളിലും മറ്റും ഹിന്ദുക്കൾ ഒരു രൂപ പോലും കൊടുക്കാൻ പാടില്ല എന്നും മറ്റും പ്രസംഗിക്കുന്നതായി കാണുകയും ടി പ്രസംഗം ഹിന്ദു-മുസ്ലീം സമുദായ അംഗങ്ങൾക്കിടയിൽ മതസ്പർദ വളർത്തുന്നതും പരസ്പരം വൈരമുണ്ടാക്കുന്നതും സൗഹൃദ അന്തരീക്ഷം തകർക്കുന്നതുമാണ് എന്ന് എനിക്ക് ഉത്തമബോദ്ധ്യം വന്നതിൻറെ അടിസ്ഥാനത്തിൽ മുൻ MLA പി സി ജോർജിനെതിരെ ഫോർട്ട് പോലീസ് സ്റ്റേഷൻ ക്രൈം 677/2022 U/s 153 A. IPC പ്രകാരം ഞാൻ ഈ കേസ് രജിസ്റ്റർ ചെയ്യുന്നു. സംഭവസ്ഥലം ഇവിടെ നിന്നും 500 മീറ്റർ വടക്ക് മാറിയാണ്."

10. I extracted the Malayalam portion of the FIR itself, just to show the way in which a politician is making a speech at public functions in a country like India, even though it is a conference of the Hindu community! Based on the above FIR, the petitioner was arrested and produced before the Judicial First Class Magistrate Court-II, Thiruvananthapuram. The learned Magistrate granted bail in CMP No.340/2022 in Crime No.677/2022 of Fort Police Station, even though the allegations

are serious, with the following conditions:

> "(1) The accused is released on bail on executing a bond for Rs.50,000/- with two solvent sureties each for the like sum.
>
> (2) The accused is directed to appear before the investigating officer for interrogation as and when required through written requisition.
>
> (3) The accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.
>
> (4) The accused is directed not to make and propagate controversial statement which may hurt the religious sentiments of others while on bail.
>
> (5) If any of the conditions are violated, the bail granted hereby will be cancelled."
>
> [underline supplied]

11. Thereafter the petitioner made a speech near Vennala, Ernakulam, on the 9th day after the above incident. It will be better to extract the relevant portion of the above FIR in Crime No.487/2022 of Palarivattom Police Station also, which is in Malayalam.

> "xxxxxxx നബി തിരുമേനിയുടെ തുപ്പൽ ബർക്കത്താണ്, അത്തറാണ്,

സ്വർണ്ണ കള്ളക്കടത്ത്, ലൗ ജിഹാദ് എന്നിവ നടത്തുന്നത് മുസ്ലീം സമുദായക്കാരാണ്, MDMA മുതലായ മയക്കുമരുന്നുകൾ പിടിക്കപ്പെടുന്നത് കൂടുതലും മുസ്ലീം സമുദായക്കാരിൽ നിന്നാണ്, മുസ്ലീം മത വിശ്വാസികൾക്ക് മക്കക്ക് പോകാൻ ഗവൺമെന്റ് സബ്സിഡി അനുവദിക്കുന്നു, ഹിന്ദു മത വിശ്വാസികൾക്ക് KSRTC ബസിൽ ശബരിമലയിൽ പോകാൻ ഇരട്ടിക്കാശ് ഈടാക്കുന്നു, ഓത്ത് പള്ളിക്കൂടത്തിലെ മൗലവിമാർക്ക് ക്ഷേമനിധിയിൽ നിന്നും ഫണ്ടും പെൻഷനും അനുവദിക്കുന്നു, ന്യൂനപക്ഷ കുസ്ൃാനിക്ക് വേദപഠനം നടത്തുന്നതിന് ഒന്നും നൽകുന്നില്ല എന്നും മുസ്ലീങ്ങൾക്ക് എന്തിന് ഇത്രക്കും ഫണ്ട് കൊടുക്കുന്നു എന്നും, എല്ലാ പാർട്ടികളിലും മുസ്ലീം തീവ്രവാദികൾ നുഴഞ്ഞ് കയറുന്നു എന്നും മറ്റും പ്രസംഗിച്ച് മതങ്ങൾ തമ്മിൽ ശത്രുത വളർത്തുന്നതിനും ഐക്യ സംരക്ഷണത്തിന് വിഘാതം സൃഷ്ടിക്കുന്ന തരത്തിലും സർവ്വോപരി ഇസ്ലാം മതവിശ്വാസികളെ വ്രണപ്പെടുത്തുന്ന തരത്തിലുള്ള വിദ്വേഷ പ്രസംഗം കരുതിക്കൂട്ടി നടത്തിയ കാര്യത്തിന് പോലീസ് ഇൻറലിജൻസ് വിഭാഗത്തിൽ നിന്നും ലഭിച്ച റിപ്പോർട്ടും ഓഡിയോ ക്ലിപ്പും ലഭിച്ചത് പരിശോധിച്ച് ആയതിന്റെ അടിസ്ഥാനത്തിൽ തത്സമയം സ്റ്റേഷൻ ചാർജ്ജിലുള്ള പാലാരിവട്ടം പോലീസ് സ്റ്റേഷൻ സബ്ബ് ഇൻസ്പെക്ടർ രതീഷ് ടി എസ് ആയ ഞാൻ സ്റ്റേഷൻ ക്രൈം 487/22 U/S 153 A, 295 A IPC പ്രകാരം കേസ് രജിസ്റ്റർ ചെയ്യുന്നു."

12. As I mentioned earlier, the above FIR was registered

immediately after the learned Magistrate released the petitioner on bail in Crime No.677/2022. After registration of Crime No.487/2022, a bail cancellation application was filed before the learned Magistrate to cancel the bail order dated 01.05.2022 in CMP No.340/2022 in Crime No.677/2022 of Fort Police Station. The learned Magistrate by order dated 25.05.2022, cancelled the bail granted to the petitioner in Crime No.677/2022. Thereafter the petitioner filed B.A. Nos. 4094/2022 & 3971/2022 before this Court for bail in Crime No.677/2022 of Fort Police Station and Crime No.487/2022 of Palarivattom Police Station. After hearing both sides, this Court as per common order dated 27.05.2022 in B.A. Nos.4094/2022 & 3971/2022 granted bail to the petitioner, by showing indulgence. It will be better to extract condition No. (iv) in B.A. No.4094/2022:

> "(iv) Petitioner shall not make any speech or statement which would tend to result in commission of offences under Sections 153A or 295A of the Indian Penal Code;"

It will be better to extract condition No. (iv) in B.A.

No.3971/2022:

> "(iv) Petitioner shall not make any speech or statement which would tend to result in commission of offences under Sections 153A or 295A of the Indian Penal Code;"

13. Thereafter, the present case is registered as Crime No.49/2025 alleging offences punishable under Sections 196(1)(a) and 299 of the BNS and Section 120(o) of the KP Act.

14. In addition to the above, some other cases are also registered against the petitioner. The petitioner is an accused in Crime No.349/2017 of Museum Police Station which is registered under Section 294(b) & 323 r/w 34 of the Indian Penal Code. To show the nature of the petitioner, it will be better to extract the brief facts of the case narrated in Column No.12 of the FIR in Crime No.349/2017. According to the prosecution, a poor food supplier has to hear abusive and filthy language from the petitioner for delay in supplying food! I know that the wording alleged to be said by the petitioner cannot be extracted in a judicial order. But to consider the bail application, I am forced to extract the same:

“പ്രതികൾക്ക് ആഹാരമെത്തിക്കാൻ താമസിച്ചതിലുള്ള വിരോധത്താൽ 27.02.2017-ാം തീയതി ഉച്ചക്ക് 2.00 മണിയോടെ വഞ്ചിയൂർ വില്ലേജിൽ കുന്നുകുഴി വാർഡിൽ പാളയം MLA Hostel- ന്റെ പടിഞ്ഞാറ് വശം സ്ഥിതി ചെയ്യുന്ന നെയ്യാർ ബ്ളോക്കിന്റെ 2-ാം നിലയിലെ 1-ാം പ്രതിയുടെ മുറിയായ 2C യിൽ ആഹാരവുമായെത്തിയ ആവലാതിക്കാരനെ 1-ാം പ്രതി എന്തെടാ മൈരെ, പുലയാടിമോനെ എന്ന് വിളിച്ച് കൈ കൊണ്ട് ആവലാതിക്കാരന്റെ വായ് പൊത്തിയടിച്ചും 2-ാം പ്രതി ആവലാതിക്കാരൻറെ വലതു ചെകിട്ടത്തടിച്ച് നീർക്കോൾ സംഭവിപ്പിച്ചും പ്രതികൾ കൃത്യത്തിന് പരസ്പരം ഉത്സാഹികളും സഹായികളുമായി നിന്ന് പ്രവർത്തിച്ച് മേൽ വകുപ്പുകൾ പ്രകാരമുള്ള കുറ്റം ചെയ്തിരിക്കുന്നുഎന്നുള്ളത്”

15. Crime No.67/2018 of Pala Police Station has also been registered against the petitioner under Section 228A of the Indian Penal Code for disclosing the name of the victim in Crime No.297/2017 of Nedumbassery Police Station during the Media One special edition program.

16. Crime No.1488/2018 of Kottayam West Police Station was registered against the petitioner based on a complaint filed by Sister Renit M.J. The offence alleged was

under Section 509 of the Indian Penal Code. It will be better to extract Column No.12 of the FIR in Crime No.1488/2018 of Kottayam West Police Station also:

> "പ്രതിക്ക് ആവലാതിക്കാരിയുടെ മാനത്തെ അധിക്ഷേപിക്കണമെന്നുള്ള ഉദ്ദേശത്തോടും, കരുതലോടും കൂടി 08/09/2018 തീയതി ഉച്ചയ്ക്ക് ശേഷം കോട്ടയം പ്രസ് ക്ലബ്ബിൽ വച്ച് പ്രതി ആവലാതിക്കാരിയെ വേശ്യ എന്നും, കൂടെയുള്ള കന്യാസ്ത്രീകളെ വൈദ്യപരിശോധന നടത്തി പരിശുദ്ധരാണോ എന്ന് നോക്കാം എന്നും മറ്റും വാർത്താ സമ്മേളനം നടത്തി ആക്ഷേപിച്ച് ആവലാതിക്കാരിക്കും മറ്റും അപമാനം ഉണ്ടാക്കി എന്നുള്ളത്."

17. These are the criminal antecedents of the petitioner. It is an admitted fact that the petitioner was released on bail by this Court in the common order dated 27.05.2022 in B.A. Nos.4094/2022 & 3971/2022 with a condition that the petitioner shall not make any speech or statement which would tend to result in the commission of offences under Sections 153A or 295A of the Indian Penal Code. The corresponding Sections in the BNS to Sections 153A & 295A of the Indian Penal Code are Sections 196 and 299 of the BNS. This Court

passed the order on 27.05.2022. Now the present case is registered under Section 196(1)(a) and 299 of the BNS.

18. The Senior Counsel submitted that it is a slip of the tongue and there is no intention on the part of the petitioner to violate the directions issued by this Court. The Senior Counsel also relied on the judgments of the Apex Court in **Bilal Ahmed Kaloo**'s case (supra), **Manzar Sayeed Khan**'s case (supra), **Balwant Singh**'s case (supra) and **Javed Ahmad Hajam**'s case (supra). I am not going to the merit of the case to find out whether the offence is made out from the facts and circumstances. That is a matter to be investigated and to be decided by a court of law, if a final report is filed. But, for the purpose of understanding the allegation against the petitioner, this Court directed the parties to produce a pen drive containing the channel discussion. This Court perused the same. I am of the *prima facie* opinion that, it cannot be said that the offences under Sections 196(1)(a) and 299 of the BNS are not attracted in the facts and circumstances of the case. I am forced to say that because the Senior Counsel relied on

several Apex Court judgments to show that the offences are not attracted. When such a contention is raised, this Court is forced to consider that point and therefore it is observed that *prima facie* the offences are attracted.

19. Then the Senior Counsel submitted that, it was a slip of the tongue of the petitioner and the petitioner made such words in the channel discussion because there was a provocation from the co-panelist. The tone and tenor of the petitioner, while making such a statement are also important. It cannot be said that it is a slip of the tongue. I once again record that, this finding is only for the purpose of deciding this bail application, while such a contention is raised by the petitioner. Then the Senior counsel said that he made such a submission, because he was provoked by the co-panelist. I am forced to say that, a politician like the petitioner, who has about 30 years of experience as an MLA can be provoked easily like this, he does not deserve to continue as a political leader. The Senior Counsel also submitted that the petitioner, immediately after the channel discussion, gave an apology through social

media as evidenced by Annexure-2. This Court perused the same. It is true that he publicly made an apology. That will not dilute the allegation against the petitioner. As I mentioned earlier, the petitioner is a Senior politician and was an MLA for 30 years representing a Constituency. The people will closely watch his speech, statements and even behaviour. The politicians should be a role model to the society. After making abusive statements which may result in communal disharmony, the apology given by the petitioner cannot be accepted. The petitioner ought to have thought that he was participating in a live coverage discussion on a channel. Lakhs and Lakhs of people are watching the television. All the people need not look into the Facebook post of the petitioner posted on the next day. Therefore, I cannot agree that, simply because the petitioner gave an apology, the offence is wiped off.

20. Then the Senior Counsel submitted that the maximum punishment that can be imposed for the offences alleged is three years or fine or with both. The preamble of our Constitution clearly states that, **"WE THE PEOPLE OF INDIA,**

having solemnly resolved to constitute India into a Sovereign Socialist <u>'Secular'</u> Democratic Republic……."(underline supplied). Article 25 to 28 of our constitution provide for the 'right to freedom of religion' also. If any statement is made by any citizen against the basic structure of our Constitution, can the offenders be dealt lightly, is a question to be decided by the Parliament. Nowadays, there is a tendency to make statements based on religion, caste etc. These are against the basic structure of our Constitution. These tendencies should be nipped in the bud. If anybody violates the same, can an offender escape from the offence even by paying a fine alone, is a matter to be considered by the Parliament and the Law Commission. For the offences under Sections 196(1)(a) and 299 of the BNS, the maximum punishment that can be imposed is three years or fine or with both. Even for a second offender, there is no higher punishment. Here is a case where the petitioner is continuously making statements which may amount to serious offences. But, a mandatory jail sentence is not prescribed for such offences. This is a serious matter to be

looked into by the Law Commission and the Parliament. The Registry will forward a copy of this order to the Chairman of the Law Commission of India.

21. In **Arnesh Kumar v. State of Bihar and Another** [2014 (8) SCC 273], the Apex Court observed like this:

> "7. xxxxxxxxx
>
> 7.1. From a plain reading of the aforesaid provision, it is evident that all person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case, or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer, or unless such accused person is arrested, his conclusions, which one

may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or more purposes, envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC."

22. The apex court said that, if a police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any

further offence. Section 41 (1) (b) (ii) Cr.P.C is relied on by the apex court. The Apex Court never said that, in serious cases, the arrest is not necessary. In **Sumitha Pradeep v. Arun Kumar C.K. and Another** [2022 (17) SCC 391], the Apex Court observed like this:

> "12. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like Pocso and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean

> that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail. ”
>
> [underline supplied]

23. Therefore, the first and foremost thing that a court hearing an anticipatory bail application is to consider the *prima facie* case put up against the accused. The necessity of custodial interrogation can be one of the grounds for declining anticipatory bail. If custodial interrogation of an accused is not necessary in connection with the investigation of a case, a court of law cannot grant anticipatory bail in all cases in a routine manner. Similarly, if the maximum punishment that can be imposed for the offence alleged in a case is below seven years, a court of law cannot grant bail to an accused in all

cases, without considering the allegation against the accused. The antecedents of the accused and the seriousness of the allegations are also important aspects to be considered by the court. But, even if custodial interrogation is not required or necessitated, that itself cannot be a ground to grant anticipatory bail.

24. Here is a case where this Court imposed a condition in the bail order dated 27.05.2022 in B.A. Nos.4094/2022 & 3971/2022 directing the petitioner not to make any speech or statement which would tend to result in the commission of offences under Sections 153A or 295A of the Indian Penal Code. Now, I am of the considered opinion that the petitioner violated the above conditions. In such circumstances, this Court need not exercise its discretionary jurisdiction under Section 482 BNSS. If this Court grants bail in these types of cases, that will give a wrong message to the society. The people may think that, even if the bail conditions are violated, they will get anticipatory bail from the court of law. Such a message should not go to the society. Therefore, I am of the considered

opinion that the petitioner is not entitled to anticipatory bail. There is no merit in this bail application.

Accordingly, the bail application is dismissed.

Sd/-

P.V.KUNHIKRISHNAN, JUDGE

DM