

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945

WP(CRL.) NO. 230 OF 2023

PETITIONER:

PRAVEEN K.P. @ PRAVEEN RANA,
AGED 37 YEARS, S/O.PUSHKARAN,
KAIPPILLY HOUSE,
VELUTHUR,
THRISSUR - 680 012.

BY ADVS.

SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA
SRI.R.GITHESH
SRI.AJAY BEN JOSE
SRI.MANJUNATH MENON
SRI.SACHIN JACOB AMBAT
SMT.ANNA LINDA EDEN
SRI.HARIKRISHNAN S.

RESPONDENTS:

- 1 THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
TRIVANDRUM, PIN - 695001
- 2 THE STATE POLICE CHIEF,
POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM, PIN - 695001
- 3 ADDITIONAL DIRECTOR GENERAL OF POLICE,
STATE CRIME BRANCH,
THIRUVANANTHAPURAM, PIN - 695001
- 4 THE SUPERINTENDENT OF POLICE,
CRIME BRANCH,
THRISSUR, PIN - 680003

5 THE DEPUTY SUPERINTENDENT OF POLICE,
CRIME BRANCH EOW, THRISSUR UNIT,
THRISSUR, PIN - 680003
BY ADVS.
SRI.P.NARAYANAN, PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 10.08.2023, ALONG WITH WP(Cr1.)No.381/2023,
THE COURT ON 25.08.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945

WP(CRL.) NO. 381 OF 2023

PETITIONER:

MR.PRAVEEN K.P. @ PRAVEEN RANA,
AGED 37 YEARS, S/O.K.K.PUSHKARAN,
KAIPPILLY HOUSE,
VELUTHUR, THRISSUR,
NOW AT DISTRICT JAIL,
THRISSUR, PIN - 682012

BY ADVS.

SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.THOMAS P.KURUVILLA
SRI.R.GITESH
SRI.P.PRIJITH
SRI.AJAY BEN JOSE
SRI.MANJUNATH MENON
SRI.SACHIN JACOB AMBAT
SMT.ANNA LINDA EDEN
SRI.HARIKRISHNAN S.

RESPONDENTS:

- 1 THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI, PIN - 682031
- 2 THE STATE POLICE CHIEF,
POLICE HEADQUARTERS,
THIRUVANANTHAPURAM, PIN - 682031
- 3 COMMISSIONER OF POLICE
THRISSUR CITY
THRISSUR, PIN - 680022

- 4 THE DISTRICT POLICE CHIEF,
THRISSUR RURAL,
THRISSUR, PIN - 680501
 - 5 THE DISTRICT POLICE CHIEF,
PALAKKAD CIVIL STATION,
PALAKKAD, PIN - 678001
 - 6 THE DISTRICT POLICE CHIEF,
KANNUR, CIVIL STATION,
KANNUR, PIN - 670002
- BY ADVS.
SRI.P.NARAYANAN, PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 10.08.2023, ALONG WITH WP(CrI.)No.230/2023,
THE COURT ON 25.08.2023 DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(CrI.) Nos.230 & 381 of 2023

Dated this the 25th day of August, 2023

JUDGMENT

These two writ petitions are filed by the same petitioner seeking reliefs relating to crimes registered against him in various police stations. Since the issue raised in these writ petitions are inter-connected and they were heard together and are being disposed of by this judgment.

2. In W.P.(CrI.) No.230 of 2023, petitioner seeks for a direction to club together all the crimes registered against him and also to transfer all the cases to the Designated Court under the BUDS Act. In W.P.(CrI.) No.381 of 2023, petitioner seeks a declaration that he is entitled to be enlarged on bail in all cases registered against him as detailed in the document produced in the writ petition in view of the decision in **Abhishek Singh Chauhan v. Union of India and Others** (2022 SCC OnLine SC 1936) by treating the first crime registered against him as the principal FIR. In the latter writ petition, the reliefs sought also include a declaration

that judicial custody in all the crimes against the petitioner be reckoned from 13.01.2023, the date of remand in the first case registered against him.

3. On 04.01.2023, Crime No.42 of 2023 of Thrissur East Police Station, alleging offences punishable under sections 406 and 420 of the Indian Penal Code, 1860 was registered against the petitioner. Soon, several other crimes were also registered against him. He was arrested on 11.01.2023, and since then, he remains in judicial custody.

4. Petitioner is the Chairman and Managing Director of an entity by the name M/s. Safe Strong Business Consultancy Private Limited. In Crime No.42 of 2023, it was alleged that petitioner promised to pay a franchisee stipend every month if a deposit is made and return the deposit after five years or to return a bulk amount along with the deposit after the term and failed to pay any amount as promised. Writ petition refers to 115 crimes registered against him before various police stations at Thrissur, Palakkad, Kannur, Kottayam, Wayanad and Pathanamthitta.

5. Petitioner contended that the allegations against him in all the crimes are the same and that investigation of those crimes have been transferred to the State Crime Branch as per an order dated 19.01.2023. Petitioner contends that all those crimes registered against him ought to have been clubbed together and re-registered as a single crime. Petitioner also contended that the Crime Branch had added offences

under the Banning of Unregulated Deposit Schemes Act, 2019 (for short 'the BUDS Act') and transferred the cases to the Designated Court - III (Additional Sessions Court), Thrissur. Petitioner further alleges that the registration of a series of crimes on the basis of the same transaction and cause of action is illegal as they need to register only one FIR in connection with the offence, and hence all the FIRs ought to be clubbed together as a single offence. The reliefs, as mentioned earlier, are claimed on the basis of the aforesaid facts.

6. Petitioner alleged that after the news of registration of the first crime became known, there was a scramble to lodge crimes at different police stations. As on the date of filing of the said writ petition, 186 crimes have been registered. Though petitioner has been in custody since 13.01.2023, arrest has been recorded only in a limited number of cases. Petitioner alleges that the conduct of the Investigating Officer in omitting to record the arrest is arbitrary and violative of the fundamental rights of the petitioner.

7. An example has been cited in respect of Crime Nos.61 of 2023 and 79 of 2023 of Vadanappally Police Station wherein, petitioner's bail applications were dismissed, stating that the accused has not been arrested. Since arrest has not been recorded in 142 cases, he alleges that he is not able to get bail or even attempt to get regular bail. Thus, petitioner prays to be enlarged on bail in all the cases registered against

him.

8. Counter affidavits have been filed in both writ petitions. The request for clubbing of various FIRs is objected to for several reasons. The respondents pleaded that after the case was transferred to the Crime Branch, a Special Investigation Team was constituted. A total of 263 crimes were registered as on the date of filing of the counter affidavit in W.P.(C) No.381 of 2023. The respondents also plead that investigations into all the cases are progressing, and the provisions of the BUDS Act have also been incorporated. Out of 263 cases registered against the petitioner, arrest has been recorded only in 185 cases and in the remaining 78 cases recently transferred to the Crime Branch, arrest has not been recorded.

9. I have heard Sri.S.Sreekumar, the learned Senior Counsel instructed by Sri.Thomas P.Kuruvila, learned counsel for the petitioner as well as Sri.P.Narayanan, learned Public Prosecutor on behalf of the respondents.

10. The points that arise for consideration are (i) whether all the FIRs registered against the petitioner can be clubbed together (ii) whether a comprehensive bail can be directed to be granted in all cases registered against the petitioner, deeming his date of arrest as 13.01.2023 and (iii) any other reliefs.

(i) Whether all the FIRs registered against the petitioner can be clubbed together?

11. In the instant case, 283 complaints are filed at different locations at different police stations in the State, all relating to separate and independent transactions. The nature of inducement, the quantum of the deposit, the place where the inducement was offered are all distinct, apart from the period for which the deposits were offered. The complainants are also different, and even the provisions of law applicable are also different in a few of the crimes. The complainants are also not parties to the writ petition. Therefore it would be prejudicial to the numerous depositors/complainants to club all those FIRs as a single offence solely for the convenience of the accused or that of the agency.

12. In **Abhishek Singh Chauhan's case** (supra), the Supreme Court directed clubbing all the FIRs registered in different States, treating the subsequently registered FIRs as statements under section 161 of Cr.P.C. The court also observed that if the accused has been granted bail in connection with the principal FIR, the bail so granted must enure in his favour until the court of competent jurisdiction cancels it, owing to supervening circumstances. The ratio of the said decision was sought to be applied to the crimes against the petitioner to club all the FIRs.

13. However, in a decision of a coordinate Bench of the Supreme Court in **Anubhav Mittal and Others v. State of Uttar Pradesh and**

Others (2022 LiveLaw (SC) 980), after noticing that the cheating and connected offences in the said case had occurred at different parts of the country and each victim having a right to prosecute his complaint through the law enforcement agency, held that the accused cannot demand conduct of investigation only with respect to a particular offence. It was also observed that the accused, who had mobilized funds from different parts of the country, could not plead his inconvenience of having to defend the case in multiple jurisdictions.

14. Thus, two divergent judgments of coordinate Benches governing the issue were brought to the notice of this Court.

15. In this context, it is apposite to refer to the decision of the Supreme Court in **Narendrajith Singh Sahani and Another v. Union of India and Others** [(2002) 2 SCC 210], while considering a similar issue it was observed as follows: *“As regards the issue of a single-offence, we are afraid that the fact situation of the matters under consideration would not permit to lend any credence to such a submission. Each individual deposit agreement shall have to be treated as separate and individual transaction brought about by the allurements of the financial companies, since the parties are different, the amount of deposit is different as also the period for which the deposit was effected. It has all the characteristics of independent transactions and we do not see any compelling reason to hold it otherwise. The plea as raised also cannot have our concurrence.”*

16. The decision in **Abhishek Singh Chauhan's case** (supra) does not lay down any principle of law that, in all circumstances, the different FIR's can be clubbed together. Further, most of the crimes in the said decision had culminated in final reports, and many of the cases were pending in court, too. On the other hand, the judgment in **Anubhav Mittal's case** (supra) strikes a different note. After holding that the convenience of the accused alone cannot be weighed by the court for deciding a proceeding of this nature, it was observed in the latter decision that *"The alleged cheating and connected offences have occurred at different parts of the country and each victim under the existing provisions of law has a right to prosecute his complaints against the petitioners through the law enforcement agency under normal circumstances having power to conduct investigation in the particular territory where complaint is lodged. It is apparent that the petitioners had mobilised funds from different parts of the country and now, on alleged default, cannot plead their inconvenience of having to defend their cases in multiple jurisdictions."*

17. In **Abhishek Singh Chauhan's case** (supra), no principle of law has been declared that in every case, clubbing of FIRs ought to be done. The three Judge's Bench in **Narendrajith Singh Sahani's case** (supra) and two Judge's Bench in **Anubhav Mittal's case** (supra) have as pointed out earlier, struck a different note. In the latter two cases, the fact situations are also similar as in the present case.

18. Apart from the above, law does not contemplate such a clubbing of FIRs and hence, such a direction, that too, at this stage of the investigation, is not called for. In view of the above discussion, the relief for clubbing of FIRs is declined.

(ii) Whether a comprehensive bail can be directed to be granted in all cases registered against the petitioner, deeming his date of arrest as 13.01.2023?

19. The right of an accused to speedy trial, flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. However, the said right cannot be extended to persons who complain of infraction of Article 21 on the ground that he is unable to walk out of jail due to the repeated number of criminal cases being registered against him. A blanket or a comprehensive order granting bail in all cases registered and to be registered in the future, deeming his date of arrest as 13.01.2023, is not a methodology contemplated under law. Hence, the prayer for a comprehensive bail is also declined.

(iii) Any other reliefs.

20. Since multiple crimes are registered, petitioner has alleged that there is an attempt to deny his liberty by avoiding arrest in many cases for long periods. Petitioner also alleged that once bail is granted in one crime, the police records his arrest in another crime registered much earlier and

repeats this process, resulting in denying the possibility of his release on bail at any time in the near future.

21. The circumstances of the case reveal that the allegation noted in the preceding paragraph is credible. Despite the petitioner remaining in custody continuously from 13.01.2023, his arrest has not been recorded even in those cases that were registered more than a month ago. The inconvenience of the agency to record arrest cannot be an acceptable reason to deny the liberty of an individual. A purposeful attempt to deny the liberty of the petitioner by delaying the recording of his arrest can amount to an unfair investigation violating Article 21 of the Constitution of India.

22. The Constitution mandates, under Article 21, that the procedure in a criminal investigation and trial must be fair, just and reasonable and not fanciful or oppressive. The assurance of a fair trial is the imperious command springing from Article 21. The said Constitutional provision pervades over every provision of law in our country. The Supreme Court had in **Vinubhai Haribhai Malaviya and Others v. State of Gujarat and Another**, [(2019) 17 SCC 1] observed that 'the hovering omnipresence of Article 21 over every provision of Cr.P.C cannot be lost sight of'. Thus, the interpretation of the provisions of Cr.P.C must of necessity, ensure adherence to Article 21, in both letter and spirit. Similarly, In **Vinay Tyagi v. Irshad alias Deepak and Others** [(2013) 5 SCC 762], the Court held

that an accused has a right to have a just and fair investigation, apart from trial, and it is the responsibility and duty of the court to ensure that the investigation is fair and does not hamper the freedom of an individual.

23. If the accused in a case is required by the investigating officer to be arrested, delaying the recording of arrest under one pretext or the other, cannot be allowed, in cases where the accused is already in custody for other crimes. Necessary steps will have to be initiated with promptitude to question the accused and to arrest him if required. An arrest can be recorded after obtaining a production warrant or other measures as contemplated under law. The delay in recording the arrest, despite the knowledge that the accused is already in custody, intrudes on his rights. Delay in recording arrest for a long period of time can be assumed to be a conscious attempt to infract the right to liberty.

24. In the statement filed on 3-08-2023, the Investigating Officer mentioned that out of 263 cases being investigated by the Crime Branch against the petitioner, arrest has been recorded only in 185 cases. Of the 78 cases in which arrest has not been recorded, only a handful of them were registered in the month of July 2023, and the rest were registered as early as in June 2023. The inconvenience of the investigating agency is projected as one of the reasons for the delay in recording arrest. If the arrest is recorded properly, the petitioner would have the liberty to apply for bail. If a delay in recording the arrest occurs, the incarceration of the

petitioner can continue for long. Misuse of the powers of arrest is possible in such an instance.

25. Therefore, it is imperative that the investigating agency proceeds to record the arrest of the petitioner immediately on being aware of the fact that he is already in custody, or at least within a reasonable time of registration of the crime. Delayed recording of arrest can be a calculated method for the continued incarceration of an accused in certain situations. This Court reminds itself that long periods of incarceration can amount to conviction without punishment, which is the antithesis of due procedure and infracts the liberty of the individual guaranteed under Article 21 of the Constitution of India.

26. The power of arrest cannot be misused by the police, and the liberty of an individual, which is the most cherished concept, has to be assiduously protected. Two decisions of significance are to be referred to at this juncture. In **Arnesh Kumar v. State of Bihar and Another** [(2014) 8 SCC 273], the Supreme Court had held that in all cases where the offences are punishable with imprisonment for a term which may extend upto seven years, the police officers shall not arrest the accused unnecessarily and detention shall not be authorised mechanically. A police officer, before arrest, has to be first satisfied that the person had committed the offence and that the arrest is necessary for one or more of the purposes envisaged by section 41(1)(a) to (e) of CrPC. Thus, he has

to be satisfied that the arrest is necessary to prevent the commission of any further offence, or for a proper investigation, or to prevent the disappearance of or tampering with the evidence, or to prevent attempts to dissuade witnesses from giving evidence or from disclosing facts to the Court or to the Police Officer; or his presence in the court, whenever required, cannot be ensured. The Police Officer effecting the arrest has to state the specific reasons in writing while making the arrest, which must be verified by the Magistrate to ensure satisfaction of the conditions precedent for such an arrest. The Supreme Court had observed that authorising detention beyond 24 hours is a solemn function and ought not to be done in a routine, casual and cavalier manner as is often done.

27. Similarly, in **Satender Kumar Antil v. Centrl Bureau of Investigation and Another** [(2022) 10 SCC 51], the Court had held that the investigating officers are duty bound to comply with the mandate of sections 41 and 41A of Cr.P.C and non-compliance would entitle the accused to bail.

28. The above decisions provide a balance between the needs of the investigating agency and the rights of the individual. In the instant case, petitioner has already been in custody for the last more than seven months, his passport has already been surrendered as admitted by the Prosecutor, all his properties have already been attached under the BUDS Act, the documents in his possession and over which he had dominion

have already been seized. Though the crimes are all different, the allegations are generally similar in nature. Thus, the requirements of section 41 of Cr.P.C, for future crimes with allegations of a similar nature are mostly satisfied. Hence, the benefit of section 41A Cr.P.C ought to be accorded to the petitioner. Of course, in cases where the allegations are different or if the investigating officer requires the arrest of the petitioner for specific reasons in a particular case, he must have the liberty to do so, provided the conditions laid down in **Arnesh Kumar** and **Satender Kumar Antil** are scrupulously complied with.

29. At the same time, the power of arrest vested with the investigating agency in appropriate cases cannot be trenched upon. A balance will have to be struck between the principles of liberty and the power of arrest as contemplated under the Cr.P.C. Therefore, in cases where the allegations are different from the crimes already registered or if the investigating officer requires the arrest of the petitioner for specific reasons in a particular case, he must have the liberty to do so, provided the conditions laid down in **Arnesh Kumar** and **Satinder Kumar Antil** are scrupulously complied with.

30. Thus, to balance the rights of the petitioner as well as that of the investigating agency and the complainants, certain directions are required to be issued regarding the arrest of the petitioner. Those directions are specified in the concluding paragraph as (iii) to (v) and are peculiar to the

circumstances arising in the instant case.

31. In conclusion,

(i). All the F.I.R's registered against the petitioner cannot be clubbed together to form a single crime.

(ii). A comprehensive order of bail is not a procedure contemplated by law to cover all crimes registered and to be registered in the future, deeming the date of arrest in the initial crime as the date of arrest in all such crimes.

(iii). As the petitioner has been in custody since 13-01-2023, delayed recording of his arrest in the crimes already registered infringes his right to life and liberty under Article 21 of the Constitution of India.

(iv). In all crimes already registered against the petitioner as on this date, his arrest shall be recorded within an outer period of ten days from today.

(v). In all crimes registered hereafter alleging offences and circumstances of a similar nature as those of the crimes already registered, the procedure contemplated under section 41A Cr.P.C. shall be followed, subject to the exception carved out under clause (vi) below.

(vi). If circumstances exist where the investigating officer requires the arrest of the petitioner in crimes to be registered hereafter, the directions in **Arnesh Kumar's case** and in **Satender Kumar Antils' case**, and the provisions of section 41(1)(ii) Cr.P.C shall scrupulously be

complied with. Further, the Magistrate concerned shall scrutinize the need for any detention in such cases with the seriousness it deserves and not in a routine manner.

Thus, W.P.(CrI.) No.230 of 2023 is dismissed, while W.P.(CrI.) No.381 of 2023 is disposed of as above.

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps

APPENDIX OF WP (CRL.) 230/2023

PETITIONER'S/S' EXHIBITS

EXHIBIT P1 TRUE COPY OF FIR IN CRIME NO.42 OF 2023
OF THRISSUR EAST POLICE STATION,
THRISSUR CITY DATED 04-01-2023

RESPONDENT'S/S' EXHIBITS

**EXHIBIT R3(a) A CHART SHOWING THE DETAILS OF THE
CASES REGISTERED AGAINST THE PETITIONER**

APPENDIX OF WP (CRL.) 381/2023

PETITIONER'S/S' EXHIBITS

EXHIBIT P1	TRUE COPY OF FIR IN CRIME NO.42 OF 2023 OF THRISSUR TOWN EAST POLICE STATION DATED 04-01-2023
EXHIBIT P2	TRUE COPY OF ORDER DATED 16-03-2023 OF IIIRD ADDITIONAL SESSIONS JUDGE, THRISSUR IN CRL.M.P.NO.1042 OF 2023
EXHIBIT P3	TRUE COPY OF DETAILED LIST OF FIR REGISTERED AT DIFFERENT POLICE STATIONS IN DIFFERENT DISTRICTS
EXHIBIT P4	TRUE COPY OF ORDER IN CRL.M.P.NO.1343 OF 2023 IN CRIME NO.61 OF 2023 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, CHAVAKKAD DATED 23-03-2023
EXHIBIT P5	TRUE COPY OF ORDER IN CRL.M.P.NO.1345 OF 2023 IN CRIME NO.79 OF 2023 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, CHAVAKKAD DATED 23-03-2023
EXHIBIT P6	TRUE COPY OF DETAILS OF THE 186 FIR REGISTERED AGAINST THE PETITIONER AT DIFFERENT POLICE STATIONS IN THE STATE