

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE VIJU ABRAHAM

FRIDAY, THE 19<sup>TH</sup> DAY OF AUGUST 2022 / 28TH SRAVANA, 1944

BAIL APPL. NO. 6446 OF 2022

Crime No.26/2022 of Kavaratti Police Station, Union Territory  
of Lakshadweep

PETITIONER/ACCUSED:

MOHAMMED KASIM H. K  
AGED 51 YEARS  
S/O SYED MOHAMMED THAZHAPPURA TT HOUSE ANDROTH  
ISLAND UNION TERRITORY OF LAKSHADWEEPPERMANENTLY  
RESIDING AT LAKE VIEW APARTMENTS ST VINCENT COLONY  
ROAD KARIMPANA PALAM CALICUT, PIN - 673006  
BY ADVS.  
AJIT G ANJARLEKAR  
G.P.SHINOD  
GOVIND PADMANAABHAN  
ATUL MATHEWS

RESPONDENT/STATE:

- 1 UNION TERRITORY OF LAKSHADWEEP  
REPRESENTED BY ITS ADMINISTRATOR, KAVARATTI,  
LAKSHADWEEP., PIN - 682555
- 2 THE STATION HOUSE OFFICER  
KAVARATTI POLICE STATION, KAVARATTI ISLAND, UNION  
TERRITORY OF LAKSHADWEEP, PIN - 682555  
BY ADVS.SHRI.SAJITH KUMAR V., SC, LAKSHADWEEP  
ADMINISTRATION

THIS BAIL APPLICATION HAVING COME UP FOR  
ADMISSION ON 19.08.2022, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:

**VIJU ABRAHAM, J.**

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**B.A. No.6446 of 2022**  
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Dated this the 19<sup>th</sup> day of August, 2022

**ORDER**

This is an application for anticipatory bail.

2. The petitioner is the sole accused in Crime No.26/2022 of Kavaratti Police Station, Union Territory of Lakshadweep alleging commission of offence punishable under Section 2 of the Prevention of Insults to National Honour Act, 1971.

3. The prosecution allegation is that, photographs were seen in WhatsApp groups, in which the petitioner, who is the State General Secretary of BJP, Lakshadweep, was seen to be holding the Indian National Flag with "saffron down" and thereby committed the aforementioned offence.

4. The learned counsel for the petitioner submitted that no offence under Section 2 of the Prevention of Insults to National Honour Act, will lie against the petitioner for the reason that the exhibition of the flag was not in a public place. It is the case of the petitioner that he is the State General Secretary of Lakshadweep BJP Unit and an active social worker who has been involving in various issues affecting the citizens in Lakshadweep. As part of the

"Har Ghar Tiranga' envisaged by the Government, the petitioner and his wife took photographs within the precincts of the petitioner's house in Calicut, where he resides permanently, and posted the same in a restricted/private WhatsApp group consisting of BJP members from Lakshadweep. Inadvertently and without any intention whatsoever, Annexure 2 photograph was taken while holding the Indian National Flag with "saffron down". Although Annexures 2 and 3 photographs were posted in the restricted/private WhatsApp group consisting of BJP members from Lakshadweep, someone forwarded Annexure 2 alone to various WhatsApp groups in Lakshadweep, by depicting that the petitioner had held the national flag upside down. Immediately after the petitioner realized his inadvertent mistake, he made a public apology by stating that the national flag was not held with "saffron down" with an intention whatsoever to dis-respect the Indian National Flag but was occasioned only due to an inadvertent, unintentional and bona fide mistake. It is also submitted by the petitioner that the allegations levelled against him are absolutely false, unfounded and without any substance. The petitioner is a law abiding citizen, leading a peaceful life with his family and the allegations leveled against him are wrong.

5. The learned Standing Counsel for the Lakshadweep Administration seriously opposed the application for bail mainly contending that the petitioner is involved in five other criminal cases and that the petitioner has committed the alleged offence.

6. Having regard to the facts and circumstances of the case and considering the nature of the allegations, I feel that custodial interrogation of the petitioner may not be necessary and therefore, I am inclined to grant bail to the petitioner subject to stringent conditions. In the result, this application is allowed. It is directed that the petitioner shall surrender before the investigating officer on 29.08.2022, at 11 a.m, and subject himself for interrogation on that day, and in the event of arrest in Crime No.26/2022 of Kavaratti Police Station, Union Territory of Lakshadweep, he shall be produced before the jurisdictional magistrate on the very same day and shall be released on bail, subject to the following conditions:--

- (i) Petitioner shall execute bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like-sum to the satisfaction of the jurisdictional court ;
- (ii) The petitioner shall not attempt to interfere with

the investigation or to influence or intimidate any witness in Crime No.26/2022 of Kavaratti Police Station, Union Territory of Lakshadweep;

(iii) The petitioner shall not involve in any other crime while on bail.

If any of the aforesaid conditions are violated, the investigating officer in Crime No.26/2022 of Kavaratti Police Station, Union Territory of Lakshadweep may file an application before the jurisdictional Court, for cancellation of bail.

It is made clear that it is within the power of the police to investigate the matter and if necessary to effect recoveries on the information if any given by the petitioner, even when the petitioner is on bail as per the judgment of the Apex Court in **Sushila Aggarwal and others v. State(NCT of Delhi) and another(2020(1)KHC 663)**

Sd/-  
**VIJU ABRAHAM**  
**JUDGE**

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