

Jyothis Kumar vs State of Kerala

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Court : Kerala

Decided On : Mar-28-2025

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Bail Appl./4185/2025

Appellant : Jyothis Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 28TH DAY OF MARCH 2025 / 7TH CHAITHRA, 1947
BAIL APPL. NO. 4185 OF 2025 CRIME NO.900/2023 OF PALLURUTHY
POLICE STATION, ERNAKULAM AGAINST THE ORDER IN BAIL
APPL. NO.2629 OF 2025 OF HIGH COURT OF KERALA
PETITIONER/ACCUSED NO.6 (IN CUSTODY FROM 04.05.2023):
JYOTHIS KUMAR AGED 23 YEARS S/O JAYAKUMAR, JYOTHIS
BHAVAN, NEAR SCVUPS SCHOOL, MYNAKAPILLY, MYNAKAPILLY
VILLAGE, KUNNATHUR TALUK, KOLLAM DISTRICT, PIN - 690519 BY
ADVS. P.MOHAMED SABAH LIBIN STANLEY SAIPOOJA SADIK
ISMAYIL R.GAYATHRI M.MAHIN HAMZA ALWIN JOSEPH BENSON

AMBROSE

RESPONDENTS/STATE & COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 THE STATION HOUSE OFFICER PALLURUTHY POLICE STATION, BAIL APPL. NO. 4185 OF 2025 2 ERNAKULAM DISTRICT, PIN - 682006 OTHER PRESENT: SR PP-HRITHWIK C S THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: BAIL APPL. NO. 4185 OF 2025 3

P.V.KUNHIKRISHNAN, J ----- B.A.No.4185 of 2025
----- Dated this the 28th day of March, 2025

ORDER

The petitioner is an accused in S.C No.1959/2023 on the file of 1st Additional District Court, Ernakulam, which was registered based on the final report in Crime No.900 of 2023 of Palluruthy Police Station, Ernakulam. The above case is registered against the petitioner alleging offences punishable under Sections 20(b)II(C), 8(C), 25, 27(A) and 29(1) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

2. The prosecution case is that, in furtherance

of the criminal conspiracy hatched by the accused persons, on 07.04.2023 at 05.55 p.m. 174.250 Kgms of dry Ganja was found stored in a Maruthi Suzuki car, which was parked in the side of KMP Road. Hence, it is alleged that the accused committed the offence. The petitioner herein is accused No.6 and he was arrested on 04.05.2023. BAIL APPL. NO. 4185 OF 2025 4

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. This Court as per Annexure 1 order allowed

the petitioner to file a fresh bail application before the trial court in the light of three judgments of the Apex Court. It will be better to extract the relevant portion of Annexure 1 order. Therefore, this bail application is disposed of with the following directions:-

1. The petitioner is free to file a bail application before the Jurisdictional Court within two weeks raising all the contentions raised in this bail application.

2. If such a bail application is received, the

Jurisdictional Court will consider the same and pass appropriate orders in it, in the light of the principles laid down by the Apex Court in Ankur Chaudhary's case (supra), Nitish Adhikary's case (supra), Hasanujjamans case (supra) and also the principle laid down by this Court in Shuaib's case (supra), within two weeks from the date of receipt of the application."

5. After the above order, the petitioner filed a

fresh Bail Application and the same is dismissed as per Annexure 10 order. This Court perused the same. I am not satisfied the way in which the learned Sessions Judge BAIL APPL. NO. 4185 OF 2025 5 considered the direction of this Court in Annexure 1 order. It is true that in Annexure 10 order, it is stated that the trial was not able to schedule, because of the non co-operation of the other accused. That is not a reason to deny the bail of the petitioner. There is no allegation that the petitioner delayed the trial. Admittedly, the petitioner is in custody from 04.05.2023, now, 01 year and 10 months is over.

6. In Ankur Chaudhary's case (Supra) the Apex Court observed like this:-

6. Now, on examination, the panch witnesses have not supported the case of prosecution. On facts, we are not inclined to consider the Investigation Officer as a panch witness. It is to observe that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed

under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.

7. In Hasanujjaman's case (supra), the Apex Court

considered a case in which the accused were in custody for one year and four months. In that case also the contraband BAIL APPL. NO. 4185 OF 2025 6 seized is commercial quantity. Even then the Apex Court granted bail.

8. In Nitish Adhikary's case (supra), the Apex Court observed like this:-

During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on 09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have any criminal antecedents.

9. Keeping in mind the above principle and also

in the light of the principle under Article 21 of the Constitution of India, I think the rigor under Section 37 can be relaxed in the peculiar facts and circumstances of this case. I make it clear that this order is applicable only to the petitioner and the bail application, if any, filed by other accused is to be considered separately. The Public Prosecutor submitted that the petitioner is involved in yet another NDPS case also. But the counsel for the petitioner submitted that he is on bail in that case. BAIL APPL. NO. 4185 OF 2025 7 Considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. Petitioner shall be released on bail on executing a bond for Rs.2,00,000/- (Rupees Two Lakhs only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

2. The petitioner shall appear before the

Investigating Officer for interrogation as and when required. The petitioner shall co-operate with the investigation and 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.

3. Petitioner shall not leave India without permission of the jurisdictional Court.
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4. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

5. If any of the above conditions are

violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court. The prosecution and the victim are at liberty to approach the jurisdictional court to cancel the bail, if there is any violation of the above conditions. Sd/- P.V.KUNHIKRISHNAN JUDGE MSA
BAIL APPL. NO. 4185 OF 2025 9 APPENDIX OF BAIL APPL. 4185/2025
PETITIONER ANNEXURES Annexure 1 TRUE COPY OF THE ORDER DATED 03.03.2025 IN BAIL.APPL.2629/2025 ON HIGH COURT Annexure 2 TRUE COPY OF THE ORDER DATED 29.11.2023 IN B.A. NO.9618/2023 PASSED BY THIS
Annexure 3 TRUE COPY OF THE ORDER DATED 29.05.2024 IN B.A. NO.1229/2024 PASSED BY THIS Annexure 4 TRUE COPY OF THE COMMON ORDER DATED

12.03.2024 IN B.A. NO.5138/2024, B.A NO.6964/2024 AND B.A. NO.8313/2024 PASSED BY THIS HONORABLE COURT

Annexure 5 TRUE COPY OF THE ORDER DATED 12.03.2024 IN B.A. NO.1763/2024 PASSED BY THIS Annexure 6 TRUE COPY OF THE ORDER DATED 11.12.2024 IN B.A. NO.6104/2024 PASSED BY THIS Annexure 7 TRUE COPY OF THE ORDER DATED 09.07.2024 IN B.A. NO.4273/2024 PASSED BY THIS Annexure 8 TRUE COPY OF THE ORDER DATED 21.11.2023 IN B.A. NO.7563/2023 PASSED BY THIS Annexure 9 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 900/2023 OF PALLURUTHY POLICE STATION Annexure 10 TRUE COPY OF THE ORDER DATED 12.03.2025 IN CRL.M.P. NO. 1006/2025 IN SC BAIL APPL. NO. 4185 OF 2025 10

NO.1959/2023 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS COURT-I, ERNAKULAM TRUE COPY OF THE ORDER DATED 14.02.2025 Annexure 11 IN B.A. NO. 1964/2025 PASSED BY THIS HONBLE COURT Annexure 12 TRUE COPY OF THE ORDER DATED 05.02.2025 IN B.A. NO. 9982/ 2024 OF THE HONBLE HIGH COURT

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