

Ahad, vs State of Kerala,

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Court : Kerala

Decided On : Feb-01-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./8853/2023

Appellant : AHAD,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY, THE 1ST DAY OF FEBRUARY 2024 / 12TH MAGHA, 1945 BAIL APPL. NO. 8863 OF 2023 CRIME NO.852/2022 OF TIRUR POLICE STATION, MALAPPURAM AGAINST THE ORDER IN CRMC 594/2023 OF SPECIAL COURT (ATROCITIES AGAINST SC/ST), MANJERI PETITIONER/S: AHAD, AGED 31 YEARS S/O MUSTHAF A, PALLATH HOUSE, PARAVANNA P.O., ARIKKANCHIRA, AZHEEKKAL, TIRUR TALUK, MALAPPURAM DISTRICT, PIN - 676572 BY ADVS. SASTHAMANGALAM S. AJITHKUMAR SATHEESH MOHANAN V.S.THOSHIN SREEJITH S. NAIR MAHIMA RESPONDENT: STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT

OF KERALA, PIN - 682031 OTHER PRESENT: SR PP SMT SEETHA S THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY, THE 1ST DAY OF FEBRUARY 2024 / 12TH MAGHA, 1945 BAIL APPL. NO. 8853 OF 2023 CRIME NO.1071/2022 OF TIRUR POLICE STATION, MALAPPURAM AGAINST THE ORDER IN SC 493/2023 OF SPECIAL COURT (ATROCITIES AGAINST SC/ST), MANJERI PETITIONER: AHAD, AGED 31 YEARS S/O MUSTHAFA, PALLATH HOUSE, PARAVANNA P.O., ARIKKANCHIRA, AZHEEKKAL, TIRUR TALUK, MALAPPURAM DISTRICT, PIN - 676502 BY ADVS. SASTHAMANGALAM S. AJITHKUMAR SHIBA M SAMUEL SATHEESH MOHANAN V.S.THOSHIN SREEJITH S. NAIR MAHIMA

RESPONDENT: STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 OTHER PRESENT: SR PP SMT SEETHA S THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:3:- Dated this the 1st day of February,2024

COMMON ORDER

The applications are filed under Section 439 of the Code of Criminal Procedure, 1973, by the first accused in Crime Nos. 852/2022 & 1071/2022 of Tirur Police Station, Malappuram, registered against him for allegedly committing the offences punishable under Sections 20(c) & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, NDPS Act). The petitioner was arrested on 31.10.2022.

2. The gist of the prosecution case in Crime No.852/2022 is that, around 01.20 p.m., on 05.09.2022, the petitioner was found sitting on his motorcycle bearing

registration No.KL-55-Z-9401 and in possession of 4.72 grams of MDMA. On seeing the Police party, the accused ran away from the scene of occurrence. The petitioner was subsequently arrested on 31.10.2022 and remanded to judicial custody. In -:4:-

Crime No.1071/2022, the allegation is that, around 11.35 p.m., on 31.10.2022, the accused Nos. 1 & 2 were found transporting 190 grams of MDMA for sale in a car bearing No.KL-13-AE-2272. The accused were arrested on the spot with the contraband article. Thus, the accused have committed the above offences.

3. Heard; Sri. Sasthamangalam S. Ajithkumar, the learned counsel appearing for the petitioner and Smt.Seetha S., the learned Senior Public Prosecutor appearing for the respondent

4. The learned counsel appearing for the petitioner submitted that the petitioner is totally

innocent of the accusation levelled against him. The petitioner has been falsely implicated in the above two crimes. There is no material to implicate the petitioner in the two cases. The petitioner has been in judicial custody since 31.10.2022. The investigation in the cases are practically complete and the final reports -:5:- have been laid. Therefore, the petitioners further detention is unnecessary. Hence, the applications may be allowed.

5. The learned Public Prosecutor vehemently opposed the application. She contended that the

petitioner is a person with criminal antecedents. In addition to the above two crimes, the petitioner is also involved in Crime No.855/2022 of the very same Police Station, for allegedly committing the predicate offence under Section 308 of the Indian Penal Code, 1860. In view of the antecedents of the petitioner and the huge

commercial quantity that is involved in Crime No.1071/2022, the rigour under Section 37 of the NDPS Act applies. Hence, the applications may be dismissed.

6. The prosecution allegation in Crime No.1071/2022 is that, the petitioner and the second accused were found in possession of 190 grams of -:6:- MDMA in a car and they were arrested from the spot.

The said contraband is of a commercial quantity. In addition to the above accusation, the petitioner is also the accused in Crime No.852/2022 for allegedly being in possession of 4.72 Kgs of MDMA. The petitioner is also alleged to be an accused in Crime No.877/2022 of the same Police Station. Since the quantity that is involved in Crime No.1071/2022 is of a commercial quantity, the rigour under Section 37 of the NDPS Act applies.

7. Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, regulates the grant of bail in cases involving offences under the Act. It is profitable to extract Section 37, which reads as follows: 37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for

offences under Section 19 or Section 24 or Section 27- A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-
-:7:-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the

application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in

clause (b) of sub-section (1) are in addition to the limitations under the Criminal Procedure Code, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

8. A plain reading of the above provision

demonstrates that a person accused of an offence under Sections 19, 24 and 27-A of the Act and also involving commercial quantity shall not be released on bail unless the court is satisfied that there are reasonable grounds to believe that the accused is not guilty and is not likely to commit any offence while on bail. Therefore, the power to grant bail to a person accused of committing an offence under the Act is subject to provisions contained under Sec.439 of the Code and parameters referred to above and on the accused satisfying the twin conditions under Sec.37 of

-:8:- the Act.

9. While interpreting reasonable grounds prescribed under Section 37 of the Act, the Honourable Supreme Court in *Union of India v. Shiv Shanker Kesari* [(2007) 7 SCC 798] held as follows:

7. The expression used in Section 37(1)(b)(ii) is reasonable grounds. The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief

contemplated in turn points to existence of such facts

and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

10. In *Union of India v. Mohd. Nawaz Khan* [(2021) 10 SCC 100], the Honourable Supreme Court, after referring to a host of judicial precedents on Section 37 of the Act, observed that:

23. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug- trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed. -:9:-

11. It is also well-settled that in addition to

applying the rigour under Section 37 of the Act, the courts are also bound to follow the general parameters under Section 439 of the Code, while considering a bail application.

12. In *Prasanta Kumar Sarkar v. Ashis*

Chatterjee [(2010) 14 SCC 496], the Honourable Supreme Court has laid down the broad parameters for Courts while dealing with bail applications by holding as follows:

9.xxx xxx xxx However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused; -:10:-

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail.

13. On an anxious consideration of the materials placed on record, particularly taking note

of the nature, seriousness and gravity of the accusations leveled against the petitioner, that the petitioner was alleged to be found in possession of commercial quantity of the contraband article and that the petitioner has criminal antecedents for being involved in three cases, I do not find any reasonable ground to hold that the petitioner is not guilty of the offence alleged against him that he is not likely to commit a similar offence, if he is enlarged on bail. Therefore, I hold that the rigour under Section 37 of the NDPS Act applies to the

facts and circumstances of the case. The

applications are meritless and is only to be -:11:- dismissed. Resultantly, the applications are dismissed. Sd/- C.S.DIAS,JUDGE DST/01.02.24 //True copy//
P.A. To Judge

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