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Afsal vs State of Kerala

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Court : Kerala Orders

Decided On : Jan-09-2024

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : Bail Appl./10242/2023

Appellant : AFSAL

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. TUESDAY, THE 9TH DAY OF JANUARY 2024 / 19TH POUSHA, 1945 CRIME NO.710/2022 OF ANGAMALY POLICE STATION, ERNAKULAM PETITIONERS/ACCUSED NO.1: AFSAL AGED 23 YEARS S/O PAREETH, THAZHATHAN HOUSE, VAZHAKULAM KARA, SOUTH VAZHAKULAM P.O., ERNAKULAM DISTRICT, PIN - 686670 BY ADVS. SALIM V.S. A.M.FOUSI A.B.AJIN RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 BY ADV ADV T JAYAN -PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09.01.2024, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING:

ORDER

The petitioner is the 1st accused in Crime No.710/2022 of Angamaly Police Station which was registered for the offences punishable under Sections 8(c), 22(c) and 29 of the NDPS Act.

2. The prosecution case is that, on 08.07.2022, the

petitioner along with the 2nd and 3rd accused were found in possession of 0.630 grams of methamphetamine kept in a pouch at the back seat of a Ford Figo car owned by the petitioner. Immediately the petitioner and other accused were arrested and later on the basis of the confession statement made by the petitioner a search was conducted in the residence of the petitioner. During the course of such search, the accused Nos.4 and 5 were found in the said premises and from the information received from them, a further recovery of 376.71 grams of methamphetamine was effected from a motorcycle in possession of the 5 th accused. The arrest of the petitioner and other accused were recorded on the same day itself and since then he has been under judicial detention. Even though the petitioner approached this Court by filing an application for bail on an earlier occasion, the same culminated in Annexure 2 order by which it was dismissed. The said order was passed on 24.07.2023 and this is the 2nd application submitted by the petitioner.

3. Heard Sri.V.S. Salim, learned counsel appearing for the petitioner and Sri.T. Jayan, learned Public Prosecutor for the State.

4. The learned counsel for the petitioner submits that the

petitioner is innocent of all the allegations. It was also pointed out that there are no sufficient materials to connect the petitioner with the contraband articles recovered from the possession of the 5 th accused. According to him, the contraband articles recovered his possession was 0.630 grams only, which is small quantity and therefore, the offence under Section 22(c) of the NDPS Act, would not be attracted as against him. The further contention of the learned counsel for the petitioner is

that, he has been in judicial detention since 08.07.2022 and the chances of a trial taking place in near

future are very bleak. Therefore, in the light of the observations made by this Court in Fasil v. State of Kerala [2023 (3) KHC 212], the petitioner is entitled to get bail.

5. The learned Public Prosecutor opposes the said

application. It is pointed out that huge quantity of contraband article has been recovered during the course of search conducted as part of the investigation. The learned Public Prosecutor also places reliance upon the phone calls, tower locations to show the regular contact between the petitioner and the other accused persons including the 5th accused form whose possession the major quantity of the contraband article was recovered.

6. I have carefully gone through the records. This Court

has already considered the bail application and rejected the same as per Annexure 2 order. While rejecting the said application, this Court took note of the fact that, besides the recovery of 0.630 grams of methamphetamine from the possession of the petitioner and the accused Nos.2 and 3 there are other materials in the form of call data records, tower locations etc. which would indicate that the accused Nos. 1 to 3 went to Bangalore for the purpose of procuring the contraband articles and to bring the same to Kerala. It is the specific case of the prosecution that that they together purchased the entire contraband articles and kept with them only a small portion thereof for their personal consumption and the remaining quantity was entrusted with the 4th accused for the purpose of transportation of the same to Kerala. When a search was conducted in the residence of the petitioner, the accused Nos.4 and 5 were found there and on the revelation made by the said accused, the recovery of huge quantity of the contraband article was effected. Thus when going through the entire materials placed on record, a prima facie case is made out as there are sufficient materials to establish a possible link with the petitioner and the contraband articles. This Court has already taken note of the said fact in the earlier bail application. Of course, it is true that after the dismissal of the said application, about five months

have elapsed. However, that by itself cannot be a reason to enable the petitioner to get bail.

7. The learned counsel for the petitioner also raised a

contention that the chances of the trial taking place in the near future are very bleak. In the light of the above submission, when the matter came up for consideration on the earlier occasion, a report was called for from the learned Sessions Judge before whom the matter is pending as S.C. No.1323/2022. In response to the same, a report dated 26.12.2023 has been placed on record wherein it is reported that, the trial of the said case can be scheduled during the first week of March, 2024 and in all probabilities the trial could be completed within a period of six months from the date of scheduling the same. In the facts and circumstances of the case, I

am of the view that, said period is reasonable. Therefore, the contention put forward by the learned counsel with regard to possibility of completing the proceedings is not also acceptable. In such circumstances, when taking into account all the aforesaid aspects I do not find this as a fit case in which bail can be granted. Accordingly, this application is dismissed. Sd/- ZIYAD RAHMAN A.A. JUDGE scs

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