

Ranjith V, vs State of Kerala,

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Court : Kerala

Decided On : May-29-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./2206/2024

Appellant : Ranjith V,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY,
THE 29TH DAY OF MAY 2024 / 8TH JYAISHTA, 1946 CRIME
NO.14/2022 OF EXCISE ENFORCEMENT AND ANTI NARCOTIC
SPECIAL SQUAD, KASARAGOD, Kasargod AGAINST THE
ORDER/JUDGMENT DATED 19.01.2024 IN SC NO.187 OF 2023 OF
DISTRICT COURT & SESSIONS & MOTOR ACCIDENT CLAIMS
TRIBUNAL, KASARAGOD PETITIONER/S: RANJITH V, AGED 32
YEARS S/O. RAGHAVAN, KOOVATTY, CHAYOTH P.O, KINANOOR
VILLAGE ,VELLARIKUNDU TALUK KASARAGOD, PIN - 671314 BY
ADVS. ATHIRA A.MENON S.VISHNU (TRIPUNITHURA)
RESPONDENT/S: 1 STATE OF KERALA, REPRESENTED BY PUBLIC

PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 STATION HOUSE OFFICER, EXERCISE ENFORCEMENT AND ANTI NARCOTIC SPECIAL SQUAD.KASARAGOD, PIN - 671123 OTHER PRESENT: SR PP SMT NEEMA T V THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29.05.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The application is filed under Section 439 of the Code of Criminal Procedure by the 1st accused in Crime No.14/2022 of the Excise Enforcement and Anti Narcotic Special Squad, Kasaragode, registered against the accused (six in number) for allegedly committing the offences punishable under Sections 22(C), 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('Act', in short). The petitioner was arrested on 21.09.2022.

2. The gist of the prosecution case is that: on

21.09.2022, at around 17.50 hours, the 1 st accused was found in possession and transporting 195 grams of methamphetamine in a shoulder bag. He was arrested at the spot with the contraband article. In the investigation that was conducted, it was revealed that the accused Nos.2 to 6 had conspired with the 1 st accused to commit the above crime. Thus, the accused have committed the above offences.

3. Heard; Smt.Athira A.Menon, the learned counsel appearing for the petitioner and Smt.Neema T.V., the learned Public Prosecutor.

4. The learned counsel for the petitioner submits

that the petitioner is totally innocent of the accusations levelled against him. He has been falsely implicated in the crime. There are no materials to establish the petitioner's involvement in the case. In any given case, the petitioner has been in judicial custody since 21.09.2022, the investigation in the case is complete and the complaint has been made. Therefore, the petitioner's further detention is unnecessary. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the application. The Investigating Officer has filed a bail

objection, inter alia, contending that there are incriminating materials to substantiate the petitioner's active involvement in the crime. In fact, the contraband was seized from the conscious possession of the petitioner. Since, the contraband involved in the case is of a commercial quantity, the rigour under Section 37 of the Act applies. There are no reasonable grounds to find that the petitioner has committed the offences alleged against him. Hence, the application is only liable to be dismissed.

6. The prosecution allegation against the accused is

that, they had in furtherance of their common intention had conspired to deal with the contraband article. Accordingly, the 1st accused was apprehended with 195 grams of methamphetamine. He was arrested on the spot with the contraband article. Subsequently, the accused Nos.2 to 6 were also found involved in the case and are in judicial custody.

7. When the application came up for consideration

on 20.05.2024, this Court taking into consideration the fact that the petitioner has been in judicial custody since 21.09.2022 and the rigour under Section 37 of the Act, called for a report from the Trial Court to ascertain the status and reasonable time period required for the disposal of S.C No.187/2023. The learned Additional Sessions Judge-II, Kasaragod, by communication dated 21.05.2024, has informed this Court that the court charge against accused Nos. 1 and 5 has been framed and read over. However, the accused 2, 4 and 6 are absconding and steps under Section 83 of the Code of Criminal Procedure have been ordered against them. However, the case has been split up against the said accused. The case now stands posted to 13.06.2024 for framing of the court charge against the 3rd accused. The court below will make an endeavor to dispose of S.C No.187/2023 within six months.

8. On an evaluation of the materials on record, it can be gathered that the prosecution allegation against the petitioner is that he was found in conscious possession of 195 grams of methamphetamine which is of a commercial quantity.

9. 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- (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.

10. 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 the Act.

11. 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.

12. 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.

13. 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.

14. 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; (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.

15. On an overall scrutiny of the factual matrix, the rival submissions made across the Bar, and the materials

placed on record, and on comprehending the seriousness, gravity, and nature of the offences alleged against the petitioner, the potential severity of the punishment that can be imposed on him, the commercial quantity of the contraband involved in the case and the materials placed before this Court, I am satisfied that there are no reasonable grounds to hold that the petitioner is not guilty of the offence alleged against him and that he is not likely to commit a similar offence, if he is enlarged on bail. The petitioner has not made out reasonable grounds to dilute the rigour under Section 37 of the Act. Therefore, I hold that the application is meritless and it is only to be rejected.

Therefore, I find that the application is meritless and is only to be rejected. However, I make it clear that since the petitioner has been in judicial custody since 21.09.2022, the learned Sessions Judge shall make an endeavor to consider and

dispose of S.C.No.187/2023 within a period of six months from 21.05.2024 as stated in the communication. With the above observation, this application is dismissed. Sd/- C.S.DIAS,JUDGE Rkc/29.05.24 APPENDIX OF BAIL APPL. 2206/2024 PETITIONER ANNEXURES Annexure A1 TRUE COPY OF THE ORDER PASSED BY SESSIONS DIVISION, KASARGODE IN CRL. MP NO. 197/2024 DATED 19.01.2024 IN SESSIONS CASE NO. 187/2023

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