

Dhanesh vs State of Kerala

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Court : Kerala

Decided On : Jan-08-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./10958/2023

Appellant : Dhanesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 8TH DAY OF JANUARY 2024 / 18TH POUSHA, 1945 BAIL APPL. NO. 10958 OF 2023 CRIME NO.1558/2023 OF Kilikolloor Police Station, Kollam PETITIONER/S: DHANESH AGED 30 YEARS S/O.JAYASING, CHARUVILA VEEDU, PUNTHALATHAZHAM, VADAKKEVILA, KOLLAM, PIN - 691010 BY ADVS. K.SIJU ANJANA KANNATH RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 STATION HOUSE OFFICER KILIKOLLOOR POLICE STATION, KOLLAM, PIN - 691004 OTHER PRESENT: C.S.HRITHWIK, SENIOR PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING

COME UP FOR ADMISSION ON 08.01.2024, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING: C.S.DIAS,J
===== Dated this the
8th day of January, 2024

ORDER

The application is filed under Section 439 of the

Code of Criminal Procedure, 1973, by the third accused in crime No.1558/2023 of the Kilikolloor Police Station, Kollam, registered against the accused (five in number) alleging them to have committed the offences punishable under Secs.20(b)(ii) (B) and 29 of the NDPS Act (in short, Act). The petitioner was arrested on 9.11.2023.

2. The prosecution case, in brief, is that: On 9.11.2023 at about 5.40 p.m, the accused were found in possession of 4.302 kg of ganja, which was transported for the purpose of sale. Thus, the accused have committed the above offences.

3. Heard; Sri.K Siju, the learned counsel appearing for the petitioner and Sri.C.S Hrithwik, the learned Public Prosecutor appearing for the respondent.

4. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. He has been falsely

implicated in the crime. Moreover, this Court by order

dated 29.12.2023 in BA No.10987/2023 has enlarged the fourth accused on bail. Hence the petitioner is entitled to the benefit of the similar order especially taking into account the parity between the fourth accused and the petitioner. Hence the petitioner may be enlarged on bail.

5. The learned Public Prosecutor fairly conceded to the fact that the petitioner was arrested on 9.11.2023 and the final report has not been filed till date.

6. Indisputably, the petitioner was arrested on 9.11.2023 on the allegation that he was found in possession of 4.302 kg of ganja, which is intermediate quantity. The prosecution concedes to the fact that the investigation is not complete and the final report has not been filed.

7. The proviso to sub-sec(2) of Sec.167 specifically mandates that if the final report is not laid within 60/90 days from the date of arrest, the petitioner is entitled for compulsive/statutory bail.

8. On an appreciation of the materials placed on

record and particularly taking note of the fact that the petitioner was arrested on 9.11.2023 and the final report has not been laid, I am of the definite view that the petitioner is entitled to statutory bail. In the result, the application is allowed, by directing the petitioner to be released on bail on his executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

(i) The petitioner shall appear before the

Investigating Officer on every alternate Saturdays between 9 a.m. and 11 a.m for a period of three months or till the final report is filed, whichever is earlier. He shall also appear before the Investigating Officer as and when required;

(ii) The petitioner shall not directly or indirectly

make any inducement, threat or procure 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 or tamper with the evidence in any manner, whatsoever;

(iii) The petitioner shall not commit any offence while they are on bail;

(iv) The petitioner shall surrender his passport, if any, before the court below at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the court below on the date of execution of the bond;

(v) In case of violation of any of the conditions

mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

(vi) Applications for deletion/modification of the bail conditions shall be filed and entertained before the court below.

(vii) Needless to mention, it would be well within the powers of the Investigating Officer to investigate

the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in Sushila Aggarwal v. State of Delhi and another [2020 (1) KHC 663]. sd/- sks/8.1.2024 C.S.DIAS, JUDGE APPENDIX OF BAIL APPL. 10958/2023 PETITIONER ANNEXURES Annexure A1 THE COPY OF FIR IN CRIME NO.1558/2023 OF KILIKOLLOOR POLICE STATION DATED 10.11.2023 Annexure A2 THE COMMON ORDER DATED 22.11.2023 IN CRL.M.C NO.2443/2023 AND CRL.M.C 2451/2023 ON THE FILE OF SESSIONS COURT, KOLLAM

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