

Dipu Sahani vs State of Kerala

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Court : Kerala

Decided On : May-31-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./4115/2024

Appellant : Dipu Sahani

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS FRIDAY, THE 31ST DAY OF MAY 2024 / 10TH JYAISHTA, 1946 CRIME NO.288/2024 OF Valappatanam Police Station, Kannur PETITIONER/S: DIPU SAHANI AGED 24 YEARS S/O.SHIV CHARANSAHANI MADARWAN, CHITTUPUR VARANASI DISTRICT, UTHARPRADES, PIN - 221005 BY ADV C.K.SREEJITH RESPONDENT/S: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 SR.PP.SMT.NEEMA T.V. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31.05.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the 2nd accused in Crime No.288/2024 of the Valapattanam (shown as Baliapattam in Annexure A1 FIR) Police Station, Kannur registered against the accused (two in number) for allegedly committing the offence punishable under Section 20(b)(ii)B of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, the Act). The petitioner was arrested on 21.04.2024.

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

20.04.2024, the Sub Inspector of Police had received an information that the 1st accused was found in possession of ganja. Accordingly, a search was conducted and 7 kilograms of ganja was seized from the possession of the 1st accused. During his interrogation he confessed that the 2nd accused was also involved in the crime. Accordingly, the 2nd accused was also arrested and implicated as an accused in the crime. Thus, the accused have committed the above offence.

3. Heard; Sri.Sreejith C.K., the learned counsel appearing for the petitioner and Smt.Neema T.V., the learned Public Prosecutor.

4. The learned counsel for the petitioner submitted

that the petitioner is totally innocent of the accusations leveled against him. He has been falsely implicated in the crime solely on the basis of the confession statement made by the 1st accused which is hit by the decision of the Honourable Supreme Court in Tofan Singh vs. State of Tamil Nadu [2020 (6) KHC 111]. There is no material to link the petitioner's involvement in the crime. In any given case, the petitioner has been in judicial custody since 21.04.2024, the investigation in the case is practically complete and recovery has been effected. Moreover, the contraband involved in the case is of an intermediate quantity and the petitioner does not have any criminal antecedents. Hence, the application may be allowed.

5. The learned Public Prosecutor seriously

opposed the application. She submitted that the investigation in the case is in progress. She also stated that since the petitioner has no roots in the State of Kerala, as he is hailing from the State of Uttar Pradesh. Therefore, there is every

likelihood of him fleeing from justice. Furthermore, if the petitioner is released on bail, there is also a likelihood of him committing similar offences. Hence, the application may be dismissed.

6. The prosecution allegation is that the 1st accused

was found in possession of 7 kilograms of ganja. During his interrogation he confessed that the 2nd accused was also involved in the case. Consequently, the 2nd accused was also arrested on the basis of the confession made by the 1st accused. The fact remains that the petitioner has been in judicial custody for the last 40 days, the contraband involved in the case is of an intermediate quantity and the petitioner does not have any criminal antecedents. It is well settled in *Hussainara Khatoon v. Home Secretary, State of Bihar* [1981 SCC 181] that merely because a person does not have roots in a State, the same cannot be treated as a ground to deny bail to him.

7. On an anxious consideration of the facts, the rival

submissions made across the Bar and the materials placed on record, especially considering the fact that the petitioner has been in judicial custody for the last nearly 40 days, the investigation in the case is practically complete, recovery has been effected, and further that the contraband involved in the case is of an intermediate quantity and the petitioner does not have any criminal antecedents, I am inclined to allow the bail application, but subject to stringent conditions.

In the result, the application is allowed, by directing the petitioner to be released on bail on him 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 Saturday between 9 a.m. and 11 a.m till the final report is filed. He shall also appear before the Investigating Officer on every third Saturday

between 9 a.m. and 11 a.m. till the conclusion

of the trial in Crime No.288/2024.

(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 he is 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) The petitioner shall furnish his present and permanent address and mobile number to the Investigating Officer and also to the jurisdictional court.

(vi) The petitioner shall not leave the territorial jurisdiction of the Court of Session, Kannur without the previous permission of the jurisdictional court.

(vii) 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. (viii) Application for deletion/modification of the bail conditions shall be filed and entertained before the court below.

(ix) 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 (NCT of Delhi)* and another [2020 (1) KHC 663]. SD/-

C.S.DIAS,JUDGE rkc/31.05.24 APPENDIX OF BAIL APPL. 4115/2024
PETITIONER ANNEXURES Annexure A1 THE TRUE COPY OF THE FIR IN
CRIME NO.288/2024 ON THE FILE OF BALIAPATTAM POLICE STATION,
KANNURDT. 21/4/2024

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