

Lijo vs State of Kerala

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Court : Kerala

Decided On : Aug-07-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./6183/2024

Appellant : LIJO

Respondent : State of Kerala

Judgement :

-:1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY, THE 7TH DAY OF AUGUST 2024 / 16TH SRAVANA, 1946 BAIL APPL. NO. 6183 OF 2024 CRIME NO.151/2024 OF AGALI POLICE STATION, PALAKKAD PETITIONER: LIJO AGED 42 YEARS S/O.JAMES, PANDIKKAD HOUSE, KALLAMALA MUKKU, KALLAMALA P.O KALLAMALA VILLAGE, AGLI, PALAKKAD DISTRICT, PIN - 678582 BY ADVS.T.K.SANDEEP SWETHA R.

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 07.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -:2:- Dated this the 7th day of August, 2024

ORDER

The application is filed under Section 483 of the

Bharatiya Nagarik Suraksha Sanhita, 2023, by the sole accused in Crime No.151/2024 of the Agali Police Station, Palakkad, which is registered against him for allegedly committing the offences punishable under Sections 288 of the Bharatiya Nyaya Sanhita, 2023, Section 3 read with Section 25(1)(B)(a) of the Arms Act, and Section 5 read with Section 9(B)(1)(b) of the Explosive Substances Act, 1908. The petitioner was

arrested and remanded to judicial custody on 12.07.2024.

2. The gist of the prosecution case is that: on 11.07.2024, at around 15.00 hours, the accused was found in conscious possession of a country made gun, 12 country made iron bullets, 300 grams of gun -:3:-

powder, 130 grams of brass pieces, potash, and 3.450 liters of pig fat. The accused was arrested on the spot with the contraband article. Thus, the accused has committed the above offences.

3. Heard; Sri. T.K.Sandeep, the learned counsel appearing for the petitioner and Smt. Seetha S., the learned Senior Public Prosecutor.

4. The learned counsel for the petitioner

submitted that the petitioner is totally innocent of the accusations levelled against him. There is no material to substantiate that the petitioner has committed the above offences. In any given case, the petitioner has been in judicial custody for the last 30 days, the investigation in the case is complete, and recovery has been effected. Furthermore, the petitioner does not

have any criminal antecedents. Therefore, the petitioner may be enlarged on bail. - :4:-

5. The learned Public Prosecutor opposed the

application. She submitted that the investigation is still in progress. She also stated that if the petitioner is let off on bail, there is every likelihood of him committing a similar offence. Hence, the application may be dismissed.

6. The prosecution allegation against the petitioner is that, he was found in possession of a country made gun along with other explosive

substances. Indisputably, the petitioner was arrested on the spot on 12.07.2024. The fact remains that the petitioner has been in judicial custody for the last 30 days, the investigation in the case is complete, and the recovery has been effected.

7. In Sanjay Chandra v. CBI [2012 1 SCC 40],

the Honourable Supreme Court has categorically held

that the fundamental postulate of criminal - :5:- jurisprudence is the presumption of innocence, until a person is found guilty. Any imprisonment prior to conviction is to be considered as a punitive and it would be improper on the part of the Court to refuse bail solely on the ground of former conduct.

8. In Dataram Singh v. State of U.P. [(2018) 3

SCC 22] the Honourable Supreme Court observed that grant of bail is the rule and putting a person in jail is an exception. Even though the grant of bail is entirely the discretion of the court, it has to be evaluated based on the facts and circumstances of each case and the discretion has to be exercised in a judicious and compassionate manner.

9. The principle that bail is the rule and jail is an exception is on the touch stone of Article 21 of the Constitution of India. The right to bail cannot be denied merely due to the sentiments of the society. - :6:-

10. On an anxious consideration of the facts,

the rival submissions made across the Bar, and the materials placed on record, particularly taking into consideration the fact that the petitioner has been in judicial custody for the last 30 days, the investigation in the case is complete and recovery has been effected, I am of the definite view that the petitioners further detention is unnecessary. Hence, 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.50,000/- (Rupees fifty thousand 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 -:7:- 9 a.m. and 11 a.m till the final report is laid. 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 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) In case of violation of any of the conditions mentioned above, the jurisdictional court shall -:8:- 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 moved and entertained by 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 (NCT of Delhi) and Another* [2020 (1) KHC 663]. Sd/- C.S.DIAS, JUDGE

DST/07.08.24 //True copy// P.A. To Judge

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