

Pratheesh vs State of Kerala

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Court : Kerala

Decided On : Jan-31-2023

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Bail Appl./450/2023

Appellant : Pratheesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
TUESDAY, THE 31ST DAY OF JANUARY 2023 / 11TH MAGHA, 1944
BAIL APPL. NO. 450 OF 2023 AGAINST THE ORDER/JUDGMENT IN
BAIL APPL. 5426/2022 OF HIGH COURT OF KERALA APPLICANT/
ACCUSED NO.2: PRATHEESH AGED 40 YEARS S/O. PRAKASHAN,
EZHAPILLY HOUSE, MADAVANA, ERIYADU, KODUNGALLUR,
THRISSUR DISTRICT, PIN - 680 666 BY ADVS. SRUTHY N. BHAT
P.M.RAFIQ M.REVIKRISHNAN AJEESH K.SASI RAHUL SUNIL
SRUTHY K.K NIKITA J. MENDEZ RESPONDENT/COMPLAINANT:
STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031 BY SMT. REKHA.S - SR PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..2..

ORDER

Dated this the 31st day of January, 2023 This is the second application for regular bail filed by the 2nd accused in Crime No.21/2022 of Excise Range Office, Palakkad.

2. The offences alleged against the applicant are punishable under Sections 20(b)(ii)C, 25 and 29 of the NDPS Act, 1985.

3. The prosecution case in short is that the applicant

along with the remaining accused were found possessing and transporting 82 kgs of ganja in a tourist bus on 10/04/2022 at 9.30 a.m. and thereby committed the offence.

4. I have heard Smt.Sruthy N. Bhat, the learned counsel for the applicant and Smt.Rekha.S, the learned Senior Public Prosecutor.

5. The learned counsel for the applicant submitted that no contraband article was seized from the possession of the applicant, and no material has been collected by the investigating agency to connect the applicant with the alleged ..3..

crime and hence he is entitled to get bail. The learned public prosecutor, on the other hand, opposed the bail application. She contended that the alleged incident occurred as a part of the intentional criminal acts of the applicant and the remaining accused. The learned public prosecutor further submitted that since the quantity involved is a commercial quantity, the jurisdiction of this Court to grant bail is circumspect by the provisions of Section 37 of the NDPS Act.

6. The applicant was arrested on 10/04/2022, and he

is in judicial custody. The investigation is over, and the final report has already been filed. It is true that the quantity involved is 82 kgs which is a commercial

quantity. As per Section 37 of the NDPS Act, bail can be granted only in a case where there are reasonable grounds for believing that the accused is not guilty of the offences and that he is not likely to commit any offence while on bail.

7. The contraband article was seized from the tourist

bus. The 1st accused was the driver. Accused Nos. 3 to 5 were passengers. The applicant is alleged to be the co-driver. A reading of the case records would show that on getting secret ..4..

information, the excise officials intercepted the tourist bus, and the bags containing contraband were seized from the driver's cabin as well as from the hands of the accused Nos. 3 to 5. At the time of the seizure, the 1st accused was driving the vehicle. Two bags were found just behind the seat of the 1st accused and the accused Nos. 3 to 5 were carrying three bags. All five bags contained contraband ganja. The applicant was in the bus. Nothing has been seized from his possession. The only material to connect the applicant with the crime is that in one of the bags seized from the driver's cabin, the covid vaccination certificate and an ATM card of the applicant were found. Other than these material, there is absolutely nothing

to connect the applicant with the crime. In these circumstances, I am of the view that the rigour of Section 37 of the NDPS Act would not be attracted against the applicant. As stated already, the applicant is in custody for the last eight months. The investigation is over and the final report has already been filed. Hence I am of the view that the applicant can be released on bail.

In the result, the application is allowed on the following ..5.. conditions. :-

(i) The applicant shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(ii) The applicant shall not commit any offence of like nature while on bail.

(iii) The applicant shall not make any attempt to contact

any of the prosecution witnesses, directly or through any other person, or any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.

(iv) The applicant shall not leave the State of Kerala

without the permission of the trial Court. Sd/- DR. KAUSER EDAPPAGATH
JUDGE APA ..6.. APPENDIX OF BAIL APPL. 450/2023 APPLICANT'S
ANNEXURES Annexure 1 TRUE COPY OF THE ORDER DATED 14-06-2022 IN
CRL.M.C. NO. 1325/2022 OF THE COURT OF THE ADDITIONAL SESSIONS
JUDGE - I, PALAKKAD DIVISION Annexure 2 TRUE COPY OF THE ORDER
DATED 13-09-2022 OF THIS HON'BLE COURT IN B.A. NO. 5426/2022 Annexure
3 TRUE COPY OF THE ORDER DATED 25-11-2022 OF THE COURT OF THE
ADDITIONAL SESSIONS JUDGE- II IN CRL.M.P. NO. 4054/2022

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