

Ansar vs State of Kerala

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Court : Kerala Orders

Decided On : Feb-17-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./667/2022

Appellant : ANSAR

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
FRIDAY, THE 17TH DAY OF FEBRUARY 2023 / 28TH MAGHA, 1944
BAIL APPL. NO. 667 OF 2022 CRIME NO.1915/2021 OF
PERUMBAVOOR POLICE STATION PETITIONER/ACCUSED NO.5:
ANSAR AGED 32 YEARS, S/O ALIAR, ELLUVARAM HOUSE, NEAR
MES COLLEGE, PALLIPRAM KARA, MARAMBILLY VILLAGE - 683105,
PIN - 683105 BY ADVS. VISHNU PRABHAKAR V.S GAYATHRI
DEVI(G-317) KALAHARI CHANDRA BABU S.(K/375/1989) RINTA
ANTONY K.(K/1034/2022) AKSHAY SHYLESH(K/2354/2022) RASHMI
K.R.(K/001151/2018) RESPONDENT/STATE: STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF

KERALA, (CRIME NO. 1915/2021 OF PERUMBAVOOR POLICE STATION, ERNAKULAM DISTRICT - 683542), PIN - 683542 BY ADV ADDL.DIRECTOR GENERAL OF PROSECUTION SRI.K.A.ANAS - PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
FRIDAY, THE 17TH DAY OF FEBRUARY 2023 / 28TH MAGHA, 1944
BAIL APPL. NO. 6979 OF 2022 CRIME NO.1915/2021 OF
PERUMBAVOOR POLICE STATION, PENDING BEFORE THE FAST
TRACK SPECIAL COURT, PERUMBAVOOR, ERNAKULAM
PETITIONER/ACCUSED: NAHAS V.P. AGED 37 YEARS,
S/O.ABDULSALAM, VATTAPOYIL HOUSE, NEDUMKETTU,
UNNIKULAM P.O., KOZHIKODE DISTRICT, PIN - 673574 BY ADVS.
LUIZ GODWIN D COUTH JOSE KURIAKOSE (VILANGATTIL) BIJO
FRANCIS RESPONDENT/COMPLAINANT/STATE: STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031 BY ADVS. ADVOCATE
GENERAL OFFICE KERALA ADDL.DIRECTOR GENERAL OF
PROSECUTION(AG-11) SRI.K.A. ANAS - PP THIS BAIL APPLICATION
HAVING COME UP FOR ADMISSION ON 17.02.2023, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 17th day of February, 2023 These bail applications are filed under Section 439 of the Code of Criminal Procedure, seeking bail and the petitioners are accused Nos. 5 and 9 in crime No.1915/2021 of Perumbavoor Police Station, where the prosecution alleges commission of offences punishable under Sections 8(c), 20(b)(II)C, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act.

2. Heard the learned counsel for the respective petitioners as well as the learned Public Prosecutor. Perused the relevant materials form part of the case diary, placed by the learned Public Prosecutor.

3. The prosecution case to be read out from the report of

the Investigating Officer is that, at 16.25 hours on 11.10.2021, 30.200 kilogram of Ganja was recovered by the Perumbavoor Police from the possession of accused Nos. 1 and 2, which was booked in the name of accused Nos. 3 and 7. Later, on investigation it was revealed that, accused Nos. 1 to 10 hatched conspiracy to transport, possess and sell of Ganja against the prohibitions contained in the NDPS Act. It is alleged by the prosecution that, the other accused also contributed in the matter of transport and possession. Accordingly, accused Nos. 5 and 9, were arrested on 21.10.2021 and 23.03.2022 respectively and have been detained in custody on the allegation that the accused committed the above said offences.

4. It is submitted by the learned counsel for the 9 th

accused that, the petitioners are innocent and nothing recovered from their conscious possession. He also submitted that, since the 9th accused has no role in the transport of contraband and the brother of the 9th accused is a Cancer patient as well as his father is a physically handicapped person, is liable to be released on bail. Highlighting the custody of the 5th accused from 21.10.2021 his release also was prayed for by the learned counsel appearing for the 5th accused.

5. In this case, the prosecution case as against the 9 th accused and other accused, as per the report of the Investigating Officer is as under:

It is revealed on process of investigation that accused persons hatched a criminal Conspiracy from 27.9.2021 to 29.09.2021 at a room booked by 5 th accused in Everest Tourist home at Aluva for procurement by interstate Ganja transportation and to sell Ganja for earning profit illegally. The 1st, 6th and 8th accused visited

Visakhapatnam for buying Ganja by a car bearing registration number KL 39 D 9119. On investigation, it is revealed that the car rented by the 5th accused for the purpose of buying Ganja. The 1st, 6th and 8th accused met 3rd, 4th and 7th accused at a flat number FF2, 5th floor in Vrindavan apartment at Vishakhapatnam. The 3rd and 4th accused were waiting there for making arrangements for buying Ganja. They bought 30.20 Kg Ganja with the help of 9th accused/applicant and 10th accused by the money transferred by the 5th accused into the bank account of 9th accused/ applicant. The accused repacked the said Ganja into 3 packets for the conviance and sent the same in the name of 3rd accused, and 7th accused through DTDC Courier Service. The 5th accused was made arrangements for receiving Ganja at Kunnuvazhy. The complainant found 30.20 Kg Ganja with the possession of 1st and 2nd accused in front of DTDC office at Kunnuvzhy in Maraampally Village at 16.25 hours on 11.1.2021. Therefore, petitioner with other accused committed offences punishable under section 8(c),20(b) (II)C, 27A, 29 of NDPS Act.

6. It is submitted by the learned Public Prosecutor that,

prior to this occurrence the 9th accused was booked in another NDPS crime involving commercial quantity vide Crime No. residence of the 9th accused at 8.15 hours on 25.05.2022 and he has been in custody in the said crime, while so his arrest was recored in this crime on 23.03.2022. Thus it appears that the 9th accused is a person having involvement in two crimes under the NDPS Act, involving commercial quantity of contraband.

7. It is submitted by the learned Public Prosecutor that,

5th accused has an active role and it was he along with the other accused stayed at Vrindavan Apartment in Vishakhapatnam and arranged the contraband for transport by accused Nos. 1 and 2. Further, he has antecedents vide Crime No. 248/2021 as under:

Petitioner is an accused in Perumbavoor Police Station Crime 2277/2009 registered U/S 20 of Kerala Protection of River Banks and Regulation of Removal of Sand Act 2001. Petitioner is also an accused in Perumbavoor Police Station Cr. 2023/2020 U/s 323,324,308,506(II),34 IPC. Petitioner is also an accused in Nedumbassery Police Station Cr.248/2021 registered U/s 323,347,356,357,365,395,212, 34 IPC. He violated the bail condition imposed by Hon'ble Court in this case. Bail granted to the petitioner is cancelled by Hon'ble Court on report of the Station House Officer Nedumbassery.

8. In so far as grant of bail in cases involving commercial quantity, there is rider in Section 37(1)(b) of the NDPS Act, which provides as under:

(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.

9. Thus, this Court while granting bail to an accused, who

alleged to have committed offences under the NDPS Act involving, commercial quantity, where learned Public Prosecutor opposes grant of bail, this Court must satisfy that there are reasonable grounds for believing that the accused is not guilty of the offence and he will not likely to commit any offence while on bail. Going by the prosecution allegations, this Court could not satisfy the above conditions in any manner. Therefore, the petitioner is not liable to be released on bail.

10. The learned counsel for the 9th accused would submit

that, there shall be a direction to expedite the trial, taking note of the custody of accused Nos. 5 and 9, from 21.10.2021 and 23.03.2022 respectively. Therefore, the learned Special Judge, Perumbavoor, is directed to expedite the trial at the earliest, at any rate, within a period of six months. Accordingly, this bail application stands dismissed. Sd/- A. BADHARUDEEN SK JUDGE

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