

Sideeq vs State of Kerala

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Court : Kerala

Decided On : Feb-27-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./772/2023

Appellant : Sideeq

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
MONDAY, THE 27TH DAY OF FEBRUARY 2023 / 8TH PHALGUNA,
1944 BAIL APPL. NO.772 OF 2023 CRIME NO.840/2022 OF
PERINTHALMANNA POLICE STATION, MALAPPURAM DISTRICT
PETITIONER/ACCUSED NO.2:

SIDEEQ, AGED 52 YEARS, S/O.MUHAMMED, KOORIMANNIL
HOUSE, ERANTHODE, VALAMBUR, MALAPPURAM DISTRICT, PIN -
679325. BY ADV. SRI.K.RAKESH RESPONDENTS/STATE &
COMPLAINANT: 1 STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031. 2 THE
STATION HOUSE OFFICER, PERINTHALMANNA POLICE STATION,

MALAPPURAM DISTRICT, PIN - 679322. BY ADV. SRI.P.G.MANU, SR.PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated, this the 27th February, 2023 This is a petition filed under Section 439 of the Code of Criminal Procedure, under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred as 'NDPS Act', for short), and the petitioner seeks regular bail.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor.

3. I have perused the relevant documents forming part of the case diary placed by the learned Public Prosecutor and the report of the Investigating Officer.

4. The prosecution case is that, based on

an information received to the effect that the accused Nos.1 and 2 jointly possessed narcotic drugs at about 08:30 hrs. on 05.08.2022, when the police party inspected the petitioners near Sri Muthuvara Vishnu temple, Angadipuram, 1.020 Kg of Hashish oil recovered from the 1 st accused, which was kept in a cover at the hands of the 1 st

accused. The prosecution allegation is that accused Nos.1 and 2 jointly possessed the same for the purpose of sale against the prohibitions

contained in the NDPS Act. Accordingly, offences.

5. While canvassing regular bail to the 2nd accused, the learned counsel for the petitioner initially submitted that the confession statement recorded as that of the 1

st accused is relied on by the prosecution to implicate this petitioner as the 2nd accused and confession statement is in admissible evidence. He also pointed out that the petitioner was arrested on 05.08.2022 and final report already filed.

6. Whereas, the learned Public Prosecutor submits that in this case accused Nos.1 and 2 were arrested from the spot along with the

contraband and the submission made by the learned counsel for the petitioner that the 2nd accused was implicated based on the confession statement of the 1st accused is patently wrong. Highlighting the contraband as commercial quantity, the learned Public Prosecutor objected bail on the submission that Section 37 of the NDPS Act, interdicts grant of bail.

7. On perusal of the recovery Mahazar, it

is clear that accused Nos.1 and 2 were jointly nabbed by the police and on search conducted, doubting possession of contraband by them. It is true that the contraband was recovered by the cover possessed by the 1st accused, who was present along with the 2nd accused, at the place, where they were suspected to have possessed the contraband. Therefore, in this case, it could not be held that the petitioner got arrayed as the accused, merely on the basis of confession statement, and, in fact, the recovery is red handed recovery.

8. When the prosecution alleges possession of commercial quantity of contraband, the rider under Section 37 of the NDPS Act would apply. Section 37 of the NDPS Act provides as under:

37. Offences to be cognizable and non- bailable.--

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence

punishable for offences under section 19 or section 24 or section 27A 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.

(2) The limitations on granting of bail

specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

9. On a perusal of the Section 37(1)(a)(i), when the Public Prosecutor opposes bail application of an accused involved in a crime, where commercial quantity of the contraband was

seized, the Court can grant bail on

accused is not guilty of such offences and (2) he will not commit any offence while on bail.

10. The Apex Court considered the meaning of reasonable grounds in the decision reported in

(2007) 7 SCC 798, Union of India v. Shiv Shankar

Kesari and held that the expression reasonable grounds means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such

facts and circumstances as are sufficient in

themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

11. It was further held that the Court while considering the application for bail with reference to S.37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are

reasonable grounds for believing that thea grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. While considering the rider under Section 37 of the NDPS Act, the same principles have been reiterated, in the decisions reported in Superintendent, Narcotics Central Bureau v. R.Paulsamy [2000 KHC 1549: AIR 2000 SC 3661:

(2000) 9 SCC 549: 2001 SCC (Cri) 648: 2001

Cri LJ 117], Customs, New Delhi v. Ahmadalieva Nodira [2004 KHC 505: AIR 2004 SC 3022:2004(3) SCC 549: 2004 SCC (Cri) 834: 2004 (110) DLT 300: 2004 Cri LJ 1810: 2004 (166) ELT 302], Union of India v. Abdulla [2004 KHC 1992: 2004(13) SCC 504: 2005 Cri LJ 3115: 2005 All LJ 2334], N.R.Mon v. Md.Nasimuddin [2008 KHC 6547: 2008(6) SCC 721: 2008(2) KLD 316: 2008(2) KLT 1022: 2008(9) SCALE 334: AIR 2008 SC 2576:2008 Cri LJ 3491: 2008(3) SCC (Cri) 29], Union of India v. Rattan Malik [2009 KHC 4151: 2009(2) SCC 624: 2009(2) KLT SN 83: 2009 (1) SCC (Cri) 831:2009 Cri LJ 3042: 2009 (4) ALL LJ 627: 2009(2) SCALE 51], Union of India v. Niyazuddin [2017 KHC 4465: AIR 2017 SC 3932: 2018 (13) SCC 738], State of Kerala v. Rajesh [2020(1) KHC 557: AIR 2020 SC 721: 2020(1) KLJ 664: 2020(2) KLT SN1 : ILR 2020(1), Ker.848]. Latest decision on this point is Union of India v. Jitendra Giri [2023 Cri.LJ 799].

13. On a plain reading of Section 37(1) (b)

and 37(1)(b)(ii) of the NDPS Act, within

satisfaction of both conditions are sine qua non for granting bail to an accused who alleged to have been committed the offences under Section 19 or Section 24 or Section 27A and also for the

offences involving commercial quantity as provided under Section 37(1)(b) of the NDPS Act. Unless Section 37 is not amended by the legislature in cases specifically referred under Section 37(1)(b) of the NDPS Act, the Court could not grant bail without recording satisfaction of the above twin ingredients. Analysing the factual materials of this case

as discussed, this Court cannot hold that the petitioner did not commit the offence alleged, prima facie and he will not commit any offence while on bail. Therefore, this bail application fails and is accordingly dismissed. Sd/- A.BADHARUDEEN, JUDGE. ww APPENDIX OF BAIL APPL. 772/2023 PETITIONERS ANNEXURE: ANNEXURE A A TRUE COPY OF THE FIR AND FIS IN CRIME NO.840/2022 OF THE PERINTHALMANNA POLICE STATION DATED 5-8-2022.

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