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Suresh Kumar, vs State of Kerala,

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Court : Kerala

Decided On : Aug-08-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./3370/2023

Appellant : Suresh Kumar,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN TUESDAY, THE 8TH DAY OF AUGUST 2023 / 17TH SRAVANA, 1945 BAIL APPL. NO. 3370 OF 2023 CRIME NO.38 OF 2021 OF EXCISE RANGE OFFICE, ERNAKULAM PETITIONER/ACCUSED NO.9: SURESH KUMAR, AGED 38 YEARS, S/O. SHANMUGHARAJ, 4TH STREET, THONDAIPETTU 3, INDIRAGANDHI NAGAR, CHENNAI DISTRICT, TAMIL NADU STATE, PIN - 600081 BY ADVS. ASHISH GOPAL K.G KHADEEJA RISHBATH KALLINGAL SREEJA K.S. SYAM K.P. RESPONDENT/COMPLAINANT: STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 BY ADV PUBLIC PROSECUTOR

PP - M P PRASANTH THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 8th day of August, 2023 This is the 2nd bail application filed by the 9 th accused in Crime No.38 of 2021 of Excise Range Office, Ernakulam under Section 439 of the Code of Criminal Procedure.

2. The petitioner had filed an earlier bail application vide B.A. No.10321 of 2022. This Court dismissed the same as per

order dated 27.01.2023 and the order is as under:

This bail application has been filed under Section 439 of the Code of Criminal Procedure, seeking regular bail.

2. The petitioner is the 9th accused in Crime No.38 of 2021 on the files of Excise Range Office, Ernakulam District.

3. Heard the learned Counsel for the petitioner and the learned Public Prosecutor.

4. The prosecution case that could be read out from the

case diary produced by the Public Prosecutor is that at 7 p.m on 19.08.2021, the Excise Enforcement and Anti Narcotic Special Squad, Ernakulam detected 1.085 Kgs of MDMA without identifying the possessor of the same. Accordingly, crime was registered alleging commission of offences punishable under Section 22(c), 27 A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Thereafter, as part of the investigation, the CCTV details available at Marhaba Apartment, Vazhakala was examined and accordingly it was found that accused Nos.1 to 9 are the

persons behind the transport of the said commercial quantity of the contraband and accordingly all the accused were arrested in periodical intervals.

5. The learned Counsel for the petitioner submitted that

the petitioner has no criminal antecedents and he was implicated in the said crime on the basis of confession statement of other accused persons. He has also submitted that he has been in custody from 10.06.2022 onwards. Therefore, he is liable to be released.

6. The learned Public Prosecutor vehemently opposed

> the release of the petitioner on bail on the ground that he had involvement in another crime vide Crime No.36/2021 under NDPS Act and also the prosecution records including the CCTV footage would establish prima facie that he also had involvement in this crime. Therefore, this Court cannot release him on bail diluting the rider provided under Section 37(1)(b) of the NDPS Act.

7. Hence, the prosecution alleges possession of commercial quantity of contraband. In such cases 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.

8. On a perusal of the Section 37(1)(a)(i), when the

> Public Prosecutor opposes bail application of a person involved in a crime, where commercial quantity of the contraband was seized, the Court can grant bail only after satisfying two conditions: viz; (1) There are reasonable grounds for believing that the accused is not guilty of such offences and (2) he will not commit any offence while on bail.

9. 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.

10. 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 the accused is not guilty and records its satisfaction about the existence of such 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.

11. 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 Cril 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]

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

(ii) of the NDPS Act, within the ambit of the Settled law, it

has to be understood that two ingredients shall be read conjunctively and not disjunctively. Therefore 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.

13. While apprising the facts of this case to dilute the

rider under Section 37 of the NDPS Act, it could be gathered prima facie that there are materials in abundance to connect the petitioner in this crime inclusive of CCTV footage, and this Court cannot hold that the petitioner is innocent of the allegations and he will not commit any offence while on bail, if he will be released on bail. That apart the petitioner herein had involvement in two crimes under NDPS Act, as of now. Therefore, this bail application is found to be meritless and is dismissed.

3. The learned counsel for the petitioner argued the same

grounds earlier argued for granting regular bail to the petitioner highlighting custody of the petitioner from 10.06.2022. In fact, the earlier bail application filed by the petitioner who is having criminal antecedents was dismissed highlighting the rigor under Section 37 of the Narcotic Drugs and Psychotropic Substances Act. Therefore, there is no reason to revisit the said order. In view of the above, this bail application stands dismissed. Sd/- A. BADHARUDEEN SK JUDGE

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