

Ansar vs State of Kerala

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Court : Kerala Orders

Decided On : Jul-27-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Bail Appl./3539/2023

Appellant : ANSAR

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
THURSDAY, THE 27TH DAY OF JULY 2023 / 5TH SRAVANA, 1945
BAIL APPL. NO. 3539 OF 2023 CRIME NO.1915/2021 OF
PERUMBAVOOR POLICE STATION, ERNAKULAM RURAL SC
561/2022 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT -
II, NORTH PARAVUR / I ADDITIONAL MACT, NORTH PARAVUR
PETITIONER/ACCUSED NO.5: ANSAR AGED 32 YEARS S/O.ALIAR,
ELLUVARAM HOUSE, NEAR MES COLLEGE, PALLIPRAM KARA,
MARAMBILLY VILLAGE, ERNAKULAM DISTRICT, PIN - 683105 BY
ADVS. SAJEEVAN KURUKKUTTIYULLATHIL SAJU JOSE VISHNU
PRABHAKAR V.S. RESPONDENT/COMPLAINANT: STATE OF

KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM, PIN - 682031 BY PUBLIC PROSECUTOR SRI.SANAL P.RAJ THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 14.07.2023, THE COURT ON 27.7.2023, DELIVERED THE FOLLOWING: BAIL APPL. NO. 3539 OF 2023 2

ORDER

Dated this the 27th day of July, 2023 This is the second application for regular bail, filed by the petitioner, who is the 5th accused 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 (for short, the NDPS Act hereinafter).

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

3. I have perused the relevant materials form part of the case diary, placed by the learned Public Prosecutor.

4. 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 BAIL APPL. NO. 3539 OF 2023 3 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.

5. It is submitted by the learned counsel for the petitioner

that the petitioner is innocent and nothing recovered from his conscious possession. He also submitted that B.A.No.667/2022, filed by the petitioner was dismissed by this Court, as per order, dated 17.2.2023, on the finding that the rigor under Section 37 of the NDPS Act, could not be diluted. Highlighting the custody of the petitioner/5th accused from 21.10.2021 and the delay in trial, his release was prayed for by the learned counsel appearing for the 5th accused.

6. While strongly opposing regular bail plea, at the

instance of the petitioner pressed for the second time, it is submitted by the learned Public Prosecutor that the 5th accused BAIL APPL. NO. 3539 OF 2023 4 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, which are extracted hereunder:

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.

7. Earlier, the regular bail plea, at the instance of the

petitioner, was dismissed, as per order in B.A.No.667/2022, dated 17.2.2023. On perusal of the earlier bail order, this Court observed as under, while dismissing the bail application: 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 BAIL APPL. NO. 3539 OF 2023 5 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 9 th 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.

8. In this second bail application also, the learned counsel

for the petitioner has not raised any change in circumstances to grant regular bail to the petitioner. Hence, this bail application BAIL APPL. NO. 3539 OF 2023 6 also stands dismissed. As per the earlier bail order in B.A.No.667/2022, dated 17.2.2023, this Court dismissed the regular bail plea filed by the petitioner herein,

with a direction to the learned Special Judge, Perumbavoor to expedite the trial at the earliest, within a period of six months. Now, as per letter, dated 2.6.2023, the learned Special Judge (Additional District and Sessions Judge - 1), North Paravur, submitted that, trial can be concluded, within a period of six months, after getting the FSL report. Therefore, the learned Special Judge is directed to expedite the trial and the prosecution is directed to take expeditious steps to get the FSL report and forward the same. Sd/- A. BADHARUDEEN JUDGE Bb

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