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Anu. B.S vs State of Kerala

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Court : Kerala Orders

Decided On : Jun-27-2023

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : Bail Appl./3834/2023

Appellant : ANU. B.S

Respondent : State of Kerala

Judgement :

B.A.No.3834/23 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. TUESDAY, THE 27TH DAY OF JUNE 2023 / 6TH ASHADHA, 1945 BAIL APPL. NO. 3834 OF 2023 CRIME NO.24/2022 OF Palakkad Excise Range Office, Palakkad AGAINST THE ORDER/JUDGMENTSC 1041/2022 OF III ADDITIONAL DISTRICT COURT, PALAKKAD / II ADDITIONAL MACT, PALAKKAD

PETITIONER/ACCUSED NO.2: ANU.B.S, AGED 22 YEARS, S/O.BINU, ARUN BHAVAN, KATHIRADICHANPARA, KUDAPPANAMOODU. KOVILOORU, VELLARADA P.O. THIRUVANANTHAPURAM, PIN - 695

505. BY ADVS. VISHNUPRASAD NAIR JITHIN VARGHESE RESPONDENT/STATE: STATE OF KERALA, REPRESENTED PUBLIC PROCECUTOR, HIGH COURT OF KERALA, KOCHIN, PIN - 682 031. BY SMT.NEEMA V., PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: B.A.No.3834/23 2

ORDER

This is an application for regular bail filed under Section 439 Cr.P.C.

2. The petitioner is the 2nd accused in Crime No.24 of 2022

of the Excise Range Office, Palakkad. The offences alleged against the petitioner and other accused are under Sections 20(b) (ii) (c) read with Section 29 of the NDPS Act.

3. The prosecution case is that on 06.05.2022 at 3.00 PM,

while the Excise officials attached to Palakkad Excise Range and the Railway Protection Force were conducting a routine joint search of the passengers alighting from the trains, and when they reached near the over bridge in the platform, they came across

two persons carrying shoulder bags. As the Excise par

officials searched the bags, it was found that both bags contained two packets each of ganja. When weighed, it was found that the total quantity of the ganja was 20.5 Kg. The petitioners were B.A.No.3834/23 3 arrested along with the contraband article from the spot. The crime registered in such circumstances. Since then, the petitioner

and the other accused have been under judicial custody. Investigation in this case is over, and the final report has been submitted. Now the matter is pending as SC.No.1041 of 2022 on the file of the Addl.District and Sessions Court-III, Palakkad. This application is submitted in such circumstances seeking regular bail.

4. Heard Sri.Jithin Varghese, learned counsel for the petitioner and Smt.Neema V., learned Senior Public Prosecutor for the State.

5. The learned counsel for the petitioner submits that the

petitioner is innocent of all the allegations. According to him, the quantity detected from the possession of the accused persons is just above the commercial quantity, and the manner in which the quantity was calculated is wrong. According to him, the petitioner and the 1st accused were allegedly found with two packets each in the bags held by them, and the total quantity thereof is 20.5 Kg. Learned counsel for the petitioner points out that since the

contraband articles were found in separate bags held by the accused persons, both of them should have been weighed separately, and only since the same were weighed jointly, the quantity became the commercial quantity. In such circumstances, it is pointed out that implicating the petitioner for the offence under Section 20(b) (ii) (c), is not legally sustainable, as from the physical possession of the petitioner, no contraband article of

commercial quantity was detected. The learned counsel for the petitioner also pointed out that the petitioner has been in custody since 06.05.2022 and more than one year has elapsed since his arrest date. He then placed reliance upon the decision rendered by this Court in Jijendran v. State of Kerala in B.A.No.2816 of 2023, wherein certain observations were made by this Court with regard to the circumstances in which the rigour of Section 37 NDPS Act gets diluted. Besides the same, he placed reliance upon decisions rendered by the Honourable Supreme Court in Rajuram v. State of Bihar [(2023) 1 Supreme 670], Mohd Muslim @ Hussan v. State (NCT of Delhi), [2023 LiveLaw (SC) 260,

 online] and Dheeraj Kumar Shukla v. State of Uttar Pradesh [SLP (Crl.) No.6690/2022].

6. On the other hand, the learned Public Prosecutor

opposed the said application. It is pointed out that the petitioner and other accused were caught red-handed along with the contraband articles. With regard to the contention raised by the learned counsel for the petitioner relating to the weighing of the contraband article together, it was pointed out that there are ample materials indicating that the petitioner and the 1 st accused have purchased the contraband article together from Tamil Nadu and the same was being transported to Kerala. To substantiate the same, ample materials including the call data records and other relevant evidence are available. The dismissal of the application was sought in such circumstances.

7. I have gone through the records. Earlier, when this

matter came up for consideration before this Court, a report was called for from the learned Sessions Judge as to the time within which the trial of case can be concluded. In response to the same, a report dated 27.05.2023 has been placed on record by the B.A.No.3834/23 6 Sessions Judge, wherein it is mentioned that the case has been posted on 22.07.2023 for hearing on charge, and the trial can be completed within a period of six months.

8. When going through the contentions raised by the petitioner, I am of the view that in the facts and circumstances of the case, the decisions mentioned above cannot be taken into

consideration. It is true that contraband articles were found in separate bags held by the petitioner as well as the 1 st accused. However, from the part of the prosecution, there is a clear explanation forthcoming for weighing both the bags together as there are ample materials indicating that the same was purchased by the petitioner and the other accused together and transported the articles to Kerala. In the light of the aforesaid submission and the materials placed on record, it is a matter for trial. As regards the decision relied on by the learned counsel for the petitioner, in Jijendran (supra), I am of the view that the same cannot be

applicable in the facts and circumstances of the case. In paragraph No.11 of the said judgment, the circumstances in which the rigour of Section 37 of the NDPS Act can be included are B.A.No.3834/23 7

mentioned. One of the observations in the said decision is that if there is impossibility of completing the trial within a reasonable time, i.e. within a period of six months, the question of granting bail can be considered. In this case, there is already a report provided by the learned Sessions Judge wherein it is reported that, the trial of the said case can be completed within a period of six

months. The allegations are very serious, and the quantity is commercial. The specific role was allegedly played by the petitioner is also evident from the records. In such circumstances, I do not find any justification for granting bail to the petitioner. Therefore, this application is dissmissed, but with an observation that, every endeavour shall be made by the trial court, to complete the trial of the said case within the time mentioned in the report dated 27.05.2023 submitted by the learned Sessions Judge. Sd/- ZIYAD RAHMAN A.A. JUDGE DG/27.6.23 B.A.No.3834/23 8 APPENDIX OF BAIL APPL. 3834/2023 PETITIONER ANNEXURES Annexure 1 THE TRUE COPY OF THE SEIZURE MAHAZAR DATED 6/5/2022 Annexure 2 THE TRUE COPY OF THE ORDER DATED 15-09-2022 IN CRL.MC-2587/2022

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