

Aswin vs State of Kerala

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Court : Kerala

Decided On : Aug-21-2023

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : Bail Appl./4062/2023

Appellant : ASWIN

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
MONDAY, THE 21ST DAY OF AUGUST 2023 / 30TH SRAVANA, 1945
BAIL APPL. NO. 4062 OF 2023 CRIME NO.686/2022 OF Sasthamcotta
Police Station, Kollam AGAINST THE ORDER/JUDGMENT SC
2001/2022 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT -
V, KOLLAM / IV ADDL.M.A.C.T. CMP 657/2023 OF ADDITIONAL
DISTRICT COURT & SESSIONS COURT - V, KOLLAM / IV
ADDL.M.A.C.T.

PETITIONER/ACCUSED NO.1: ASWIN AGED 29 YEARS S/O.
ASHOKAN, ASHOKA MANDIRAM, PARAYAM, MULAVANA, KOLLAM,

PIN - 691503 BY ADVS. SASTHAMANGALAM S. AJITHKUMAR SATHEESH MOHANAN RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 BY SR.PP., SRI. C.K. SURESH THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21.08.2023, ALONG WITH Bail Appl..4037/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
MONDAY, THE 21ST DAY OF AUGUST 2023 / 30TH SRAVANA, 1945
BAIL APPL. NO. 4037 OF 2023 CRIME NO.686/2022 OF Sasthamcotta
Police Station, Kollam AGAINST THE ORDER/JUDGMENT Bail Appl.
213/2023 OF HIGH COURT OF KERALA

PETITIONER/ACCUSED NO.2: AKHIL AGED 28 YEARS S/O. AJAYA KUMAR, AJAYA NIVAS, KOTTATHALA, MYLOM, KOLLAM., PIN - 691507 BY ADVS. C.P.UDAYABHANU NAVANEETH.N.NATH ABHISHEK M. KUNNATHU RASSAL JANARDHANAN A. P.R.AJAY RESPONDENTS/COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 SUB INSPECTOR OF POLICE SASTHAMCOTTA POLICE STATION, KOLLAM RURAL, PIN - BY SR.PP., SRI. C.K. SURESH THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21.08.2023, ALONG WITH Bail Appl..4062/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :3:

VIJU ABRAHAM , J.

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Dated this the 21st day of August, 2023

ORDER

These are applications for regular bail.

2. BA.No. 4037/2023 is filed by accused No. 2, whereas BA.No. 4062/2023 is filed by the accused No.1 in Crime No. alleging commission of offences punishable under Sections 20(b)(ii)

(c) of the Narcotic Drugs and Psychotropic Substances Act (for short, NDPS Act).

3. The prosecution allegation is that, on 08.05.2022 at

around 10.55 p.m. at Bharanikkavu Junction, when the Sub Inspector of Police, Sasthancotta Police Station and his party intercepted and inspected an Innova car bearing No. KL 03/AB-5511 in which accused was travelling, they were found in possession of 46.78 kilograms of ganja which they have transported from Andhra Pradesh to Kerala.

4. Petitioners submit that they have been falsely implicated in the above said crime and that they are in custody from 09.05.2022 onwards. Petitioners further submit that the investigation is over and final report has been laid in the above said :4: crime and therefore their further detention is not required for the purpose of the investigation.

5. Learned Public Prosecutor seriously opposed the

application for bail mainly contending that 46.78 kgs of ganja was seized from the possession of the petitioners and since the alleged contraband involved is of commercial quantity, the petitioners are not entitled for bail in view of the rigor of Section 37 of the NDPS Act.

6. When the matter was taken up for consideration, the

learned Counsel appearing for the respective petitioners in the bail applications would submit that they are entitled for statutory bail. They raised the said contentions on the basis of the fact that after filing of the charge sheet the prosecution has requested permission for further investigation and because of the same the trial of the case could not take place. Petitioners submit that such an incomplete charge sheet was filed only to see that petitioners are not released

statutory bail. Even though the prosecution has ample power under Section 36A (4) of the NDPS Act to seek extension of time beyond the period of 180 days to complete the investigation, the investigating officer filed a final report before the court without even completing the investigation.

7. The learned counsel for the petitioner would rely on the

recent order of the High Court of Delhi in CBI v. Kapil Wadhawan,

:5: Crl.M.C. No. 6544/2022 to contend that in a similar situation, the accused was granted statutory bail. Petitioners also rely on the

order of the High Court of Punjab and Haryana in Chandraprakash

v. State of Haryana, C.R.R. No. 1326/2023, and order of the

High Court of Delhi in Riyazuddin v. State NCT of Delhi, BA No.

8. Per contra, the learned Public Prosecutor opposed the

application for bail mainly contending that the charge sheet in respect of the petitioners is already filed (Part-A) and numbered as SC No. 2001/2022 and the investigation against the other accused is still going on (Part-B). Since the accused gave wrong password of the mobile phone seized, the same could not be examined by the FSL. As the examination of the mobile phones which are seized in

connection with the crime was necessary as part of the investigation of the Part-B case against the other accused, a petition was filed by the prosecution to permit further investigation, which was allowed by the court. Later a report dated 12.05.2023 was filed before the trial court intimating that the mobile phones could not be verified as wrong passwords were given and requested to start the trial as against the petitioners as charge sheet has already been laid. The public prosecutor would further submit that the charge sheet against the petitioners has

already been laid and the verification of the mobile phones was necessary in connection

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with the investigation which is going on in respect of the other accused and therefore the contention of the petitioners that an incomplete charge sheet has been filed is without any basis. In support of his contention, the learned public prosecutor relies on the judgment in CBI v. R.S. Pai and another, [2002 (5) SCC 82]; Narendra Kumar Amin v. CBI and others, [2015 (3) SCC 417]; Vipul Shital Prasad Agarwal v. State of Gujarat, [2012

(4) KLT SN 144]; Saharath V.P. v. State of Kerala, [2021 KHC 5061]; Shino Paul and Others v. State of Kerala and Others [2010 (1) KHC 469]; Peethambaran v. State of Kerala, [2020

(1) KLT 722]; and Sameer v. State of Kerala, [2021 (5) KLT 357].

9. In Kapil Wadhawans case supra, the charge sheet was

filed by the CBI. As per the charge sheet itself, it is mentioned that further investigation with regard to ascertaining the role of certain persons and entities who are mentioned in the FIR and other connected issues were still continuing and the trial court on a consideration of the said charge sheet found that the same is

incomplete and therefore granted statutory bail and the said order

was upheld by the Delhi High Court in the aforesaid judgment

holding that on the face of it, as reflected by the learned Senior Counsel, a major part of the role is yet to be investigated. In Chandraprakashs case supra, charge sheet was filed without the :7:

FSL report and therefore, held that the investigation is incomplete and therefore granted statutory bail. After going through the said judgments cited by the counsel for the petitioners, I am of the opinion that those judgments are not applicable in

the facts of the present case. This is a case where the investigation against the petitioners was complete and charge sheet was filed and further

investigation was necessitated in connection with crime investigation in respect of other accused since the accused gave false password of the mobile phones. In Kapil Wadhawans case supra, as per the charge sheet itself, further investigation with regard to ascertaining the roles of certain persons and entities mentioned in the FIR and other connected issues was continuing and the court held that a major part of the fraud involved in the said case is yet to be investigated which is not the situation in the present case. As regard Chandraprakashs case supra, regarding non submission of FSL report along with the charge sheet, this court in Sameers case supra, had occasion to consider an identical question and held that submission of the final report without the FSL report cannot be termed as an incomplete final report so as to grant default bail under Section 167 (2) Cr. P.C. and I am in agreement with the said proposition laid down in Sameers case supra. In R.S. Pais case supra the Apex Court held that the additional evidence gathered during the investigation can be

:8: produced by the police officer even after submission of the charge sheet and in Narendra Kumar Amins case supra the Apex Court

held that non-filing of full set of documents with charge sheet within

the statutory period does not entitle accused to default bail as long as the charge sheet is in compliance with Section 173(2) Cr.P.C. A similar view was taken by this court in Saharath V.P.s case supra. In Shino Pauls case cited supra it was held that when the charge sheet was filed within time and was returned by the learned magistrate with certain directions regarding the investigation and the same was not resubmitted within 90 days from the date of arrest is of no consequence and if the charge sheet is filed within time, question of default bail does not arise. This Court in Peethambarans case supra again considered the question of statutory bail and held that once charge sheet is filed within the stipulated period the right of the accused stand extinguished and such right does not get reviewed merely for the reason that the Court has set aside or quashed the final report. The Apex

Court in Vipul Shital Prasads case supra has held that mere undertaking of a further investigation by investigating officer on his own or upon the direction of Superior Police Officer or pursuant to a direction by the concerned magistrate to whom the report is forwarded, does not mean that the report submitted under Section 173 (2) Cr.P.C. is abandoned or rejected. In view of the above, I am of the opinion

:9: that the petitioner is not entitled for statutory bail as final report has been filed as regard the petitioners herein. Therefore, the above bail applications are accordingly dismissed. It is made clear that the dismissal of these bail applications will not stand in the way of the petitioners in approaching this court or the trial court concerned seeking regular bail on any other grounds available to them. Sd/-
VIJU ABRAHAM JUDGE sbk/-

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