

Aswin vs State of Kerala

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Court : Kerala

Decided On : Jun-07-2023

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : CrI.MC/4396/2023

Appellant : ASWIN

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V WEDNESDAY, THE 7TH DAY OF JUNE 2023 / 17TH JYAISHTA, 1945 AGAINST THE ORDER/JUDGMENTSC 2001/2022 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - V, KOLLAM / IV ADDL.M.A.C.T. PETITIONER/S: ASWIN AGED 29 YEARS S/O. ASHOKAN, ASHOKA MANDIRAM, PARAYAM, MULAVANA, KOLLAM, PIN - 691503 BY ADV SASTHAMANGALAM S. AJITHKUMAR RESPONDENT/S: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 SRI TR RENJITH SR PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07.06.2023,

THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The petitioner herein is the 1st accused in S.C.No.2001/2022 on the files of the Additional Sessions Judge-V, Kollam. In the aforesaid case, he is accused of having committed offences punishable under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. This petition is filed being aggrieved by Annexure-3 order,

dated 03.06.2023, passed by the Additional Sessions Judge, as per which the request made by the petitioner to stop the trial scheduled to commence from 08.06.2023 was rejected.

3. I have heard Sri. Sasthamangalam S. Ajithkumar, the learned counsel appearing for the petitioner and Sri. T.R. Renjith, the learned Senior Public Prosecutor.

4. Annexure-2 is the application filed on behalf of the 1st accused to stop the trial, which is scheduled on 08.06.2023. In Para Nos. 3 and 4 of the application, it has been stated thus by the applicant.

3. It is respectfully submitted that Adv. Sasthamangalam S Ajithkumar is already engaged with another trial of SC No. 366/2022 at 8th Addl. District And Sessions Judge Ernakulam which is scheduled from 09.06.2023 to 26.06.2023 and SC No. 101/2019 Before Addl. Dist. And Sessions Judge-2 North Paravur which is Scheduled from 05.06.2023 to 15.06.2023. Hence the present schedule is not at all manageable to him.

4. If this Honble court is able to adjourn the above case to any

day during the 2nd week of July he can able to arrange his existing schedule and complete the trial of the above case. Hence it is respectfully prayed that this Honble court may be pleased to stop the trial now scheduled from 08.06.2023 and be further pleased to grant time till the 2nd week of July 2023.

5. While rejecting the request, the learned Sessions Judge had

noted that this Court, while disposing of the application for regular bail preferred by the accused Nos. 1 and 2, had directed the learned Sessions Judge to conclude the trial within an outer limit of six months

by order dated 20.01.2023. As the said period is set to expire on 19.07.2023, it was felt that no adjournment, as prayed for, could be granted. The learned Sessions Judge also noted that other cases have been scheduled for trial in the month of July 2023, and therefore it is not expedient to allow the application and adjourned the trial.

6. Sri. Sasthamangalam S. Ajithkumar, the learned counsel,

points out that in the case on hand, the Investigating Officer had filed a request to carry out further investigation, which was allowed by the court below. According to the learned counsel, the further investigation report submitted by the Police has not been filed along with the final

report in the instant case. It is urged that in view of the directions issued by this Court in the Bail Application, the learned Sessions Judge is proceeding with the trial without furnishing the report submitted after conducting further investigation. It would not be possible for the accused to face the trial without obtaining the full records of the case, contends the learned counsel. He would assert that serious prejudice would be caused if the trial is proceeded with.

7. The submission advanced by the learned counsel is vehemently

opposed by the learned Public Prosecutor. He submits that none of these contentions were raised before the learned Sessions Judge, and if the same was raised, the learned Sessions Judge would have considered the same and would have passed appropriate orders.

8. Having considered the submissions advanced, and after going

through the records, I am of the view that the order passed by the learned Sessions Judge rejecting Annexure-2 application is not liable to be interfered with.

At the same time, if the contention advanced by the learned counsel is correct and if the report submitted after further investigation is not supplied to the accused, serious prejudice would

result. The mere fact that this Court had directed the Sessions court to expedite the trial and conclude the same within a period of six months is no reason to refrain from furnishing the prosecution records to the accused.

9. At this stage, it is submitted by Sri. Sasthamangalam S.

Ajithkumar, the learned counsel appearing for the petitioner that he shall file a fresh application before the learned Sessions Judge and requests that necessary directions be issued to consider the same on its merits. In that view of the matter, while disposing of this petition, rejecting the challenge against Annexure-3 order, it is ordered that if a fresh application is submitted highlighting the grievance, the learned Sessions Judge shall consider the same and pass appropriate orders in accordance with law.

Sd/- RAJA VIJAYARAGHAVAN V JUDGE avs APPENDIX OF CRL.MC 4396/2023
PETITIONER ANNEXURES Annexure1 THE TRUE COPY OF ORDER IN
B.A.NO.213/23 OF THIS HON'BLE COURT DATED DATED20/01/23 Annexure2
THE TRUE COPY OF THE CMP NO. 993/2023 FILED BEFORE THE ADDL.
SESSIONS' COURT KOLLAM IN S.C.NO.2001/22 TO ADJOURN THE TRIAL
Annexure3 THE TRUE COPY OF COMMON ORDER IN CRL.M.P. SESSION
JUDGE-V, KOLLAM

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