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Abdusamad vs State of Kerala

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Court : Kerala Orders

Decided On : Jul-21-2023

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

Appeal No. : Bail Appl./4584/2023

Appellant : Abdusamad

Respondent : State of Kerala

Judgement :

B.A.No.4584/23 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. FRIDAY, THE 21ST DAY OF JULY 2023 / 30TH ASHADHA, 1945 BAIL APPL. NO. 4584 OF 2023 CRIME NO.17/2022 OF Nilambur Excise Range Office, Malappuram AGAINST THE ORDER/JUDGMENTCRMP 1256/2023 OF SPECIAL COURT (ATROCITIES AGAINST SC/ST), MANJERI PETITIONER/ACCUSED NO.4: ABDUSAMAD, AGED 23 YEARS, S/O.ALAVI KAITHAMOOLA VEETIL, MUTHUVALLUR AMSOM, CHULLIKKODE, KONDOTTY TALUK, MALAPPURAM (DIST.), KERALA, PIN - 673 638. BY ADVS. ANIL K.MUHAMED KRISHNAKUMAR G. AJIN SALAM RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682 031. BY SMT.SREEJA V., SR.PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: B.A.No.4584/23 2

ORDER

This is an application filed u/s 439 of Code of Criminal Procedure seeking regular bail.

2. The petitioner is the 4 th accused in Crime No.17 of 2022 of Excise Range Office, Nilambur. Offences alleged against the petitioner and other accused are under Sections 20(b)(ii) C and 29 of the NDPS Act.

3. The prosecution case is that on 12.08.2023 at about 1.25 AM, on the basis of prior information, the Excise party, Vazhikkadavu Excise Check Post intercepted two cars bearing

registration Nos.KA-03/AF/6381 and KL 24R 111. During the said inspection, it was found that, the vehicle bearing No.KA-03/ AF/6381, which is a Maruti Breeza car, was carrying 125.5 Kg Ganja and accused Nos.1 and 2 were travelling in the said vehicle. The other vehicle, which was a Beleno, was moving as an escort vehicle and the petitioner was found travelling in the

said vehicle. Total 5 persons including the petitioner were arrested on the same day along with the contraband articles. Since then, he has been under judicial detention. This B.A.No.4584/23 3 application for regular bail is submitted in such circumstances.

4. Heard Sri.Anil K. Muhamed, learned counsel for the petitioner and Smt.Sreeja V., learned 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 recovery was affected from the vehicle in which the accused Nos.1 and 2 were travelling. There is absolutely no evidence to connect the petitioner with the contraband article seized from the possession of the 1st and 2nd accused. Petitioner has been under judicial custody since 12.08.2022 and there is no fruitful purpose in keeping the petitioner under detention any further .

6. The learned Public Prosecutor on the other hand

opposes the said prayer by pointing out that there are ample evidence to connect the petitioner with the contraband article which was being transported by the 1 st and 2nd accused. Specific case of the prosecution is that, the accused persons together travelled to Mysore and obtained Ganja and the same were being transported. During the course of investigation, from the call B.A.No.4584/23 4 data records and tower location of the mobile phone used by the petitioner, it was revealed that the petitioner was in regular contact with the 1st accused. His tower location also indicate that he was in Mysore and all the accused were travelling together after procuring the contraband articles. The learned Public Prosecutor further submits that the investigation in this case is already over and final report has been submitted.

7. I have gone through the records. Even though the

learned counsel for the petitioner contends that there is nothing on record to connect the petitioner with the contraband article, the perusal of the case records would reveal that there are ample materials to connect the petitioner with the incident. The prosecution has a specific case that the petitioner along with the other accused went to Mysore and procured the contraband articles. In such circumstances, I do not find any justifiable

reason to grant bail to the petitioner. This is particularly because, quantity involved is commercial and therefore, rigour under Section 37 of the NDPS Act is applicable. From the materials placed on record, there is nothing to arrive at B.A.No.4584/23 5 satisfaction to the twin conditions contemplated under Section 37 of the NDPS Act. Therefore, I do not find merit in this applications and

accordingly the same is dismissed.

Sd/- ZIYAD RAHMAN A.A. JUDGE DG/22.7.23 B.A.No.4584/23 6 APPENDIX OF BAIL APPL. 4584/2023 PETITIONER ANNEXURES Annexure1 A CERTIFIED COPY OF ORDER IN CRL. M.P. NO. 1256/ 2023 OF SPECIAL COURT FOR SC/ST (POA) ACT & NDPS ACT CASES, MANJERY

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