

Suresh vs State of Kerala

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Court : Kerala Orders

Decided On : Jul-04-2023

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

Appeal No. : Bail Appl./4761/2023

Appellant : Suresh

Respondent : State of Kerala

Judgement :

B.A.No.4761/23 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
TUESDAY, THE 4TH DAY OF JULY 2023 / 13TH ASHADHA, 1945 BAIL
APPL. NO. 4761 OF 2023 CRIME NO.658/2021 OF Koraty Police
Station, Thrissur AGAINST THE ORDER/JUDGMENTSC 154/2022 OF
ADDITIONAL DISTRICT COURT & SESSIONS COURT -IV, THRISSUR
/ III ADDITIONAL MACT, THRISSUR PETITIONER: SURESH, AGED 36
YEARS, S/O.MAYEE, HOUSE NO. 11/26, UTHAMAPALAYAM, THENI,
TAMIL NADU, PIN - 625 533. BY ADVS. P.MOHAMED SABAH LIBIN
STANLEY SAIPOOJA SADIK ISMAYIL R.GAYATHRI M.MAHIN HAMZA
ALWIN JOSEPH RESPONDENTS/STATE & COMPLAINANT: 1 STATE

OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031. 2 THE STATION HOUSE OFFICER, KORATTY POLICE STATION, THRISSUR DISTRICT, PIN - 680 308. BY SMT.SREEJA V., PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: B.A.No.4761/23 2

ORDER

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

3. The petitioner is the 5th accused in Crime No.658 of 2021.

The offences alleged against the petitioner and other accused are under Sections 20(b)(ii) (C) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The prosecution case is that, on 24.07.2021 at 6.30 AM, the accused persons were found in possession of 209.700 kg of Ganja while they were transporting the same in a lorry bearing registration No.KL-63-3428 and in a car bearing registration No.KL-49-K-6022, in front of the Government

Press, Koratty. The petitioner was arrested along with the contraband article on the same day, and since then, he has been under judicial detention. This application for regular bail is submitted in such circumstances.

4. Heard Sri.Mohamed Sabah, 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, he has been under judicial detention since 24.07.2021, and there is no B.A.No.4761/23 3 chance of a trial taking place in the near future. The petitioner relies on a decision rendered by this Court on Fasil v. State of Kerala [2023 (3) KHC 212]. On the other hand, the learned Public Prosecutor opposes the application by pointing out that there

are ample materials indicating the role of the petitioner. The quantity involved is very huge and the petitioner was the cleaner of the lorry from such huge quantity of the contraband article was seized. According to the prosecution, they were transporting the same from Vishakhapattanam to Kerala and they were caught red handed during such transit. Such transaction was being made at the instance of the 6th accused who is involved in three other NDPS cases involving commercial quantity.

6. I have gone through the records. As rightly pointed out by the learned Public Prosecutor, there are ample materials

indicating a prima facie case against the petitioner. The specific contention of the learned counsel for the petitioner is that he has been in custody for the past, almost two years, and he also places reliance upon the decision of this Court in Fasils case (supra). It is true that, in the said decision this Court enumerated certain circumstances under which the rigour of Section 37 of the NDPS Act gets diluted. However, in this case, in the facts and circumstances

B.A.No.4761/23 4 of the case, I am of the view that the principles laid down therein cannot be applied. This is mainly because in Fasils case (supra) the observations are with regard to certain circumstances in which the rigour of Section 37 of the NDPS Act is getting diluted. However, still the question whether the bail is to be granted or not has to be decided on the basis of the facts and circumstances of each case. This is because observations in the Fasils case (supra) cannot be understood to lay down a legal proposition that the bail is to be granted to the person found in possession of the commercial quantity of the contraband article, in a mechanical manner, merely because of the fact that, the circumstances mentioned therein referred to in the said decision are in existence. On the other hand, the court, while taking a decision of bail, even if such circumstances mentioned therein are in existence, this Court has to record the satisfaction as to the dual conditions in section 37 of the NDPS Act, The only effect is that the intensity of the rigour would be lessened

due to the existence of the circumstances mentioned therein. In other words, the legal proposition in Fasils case, cannot mean that a decision without referring to or

recording the satisfaction of the dual conditions in section 37 of the Act, can be taken. B.A.No.4761/23 5 In this case, the quantity involved is huge, and there are ample materials indicating the role of the petitioner. Therefore, releasing the accused on bail in such a case would send a wrong signal to society. On careful scrutiny of the materials placed before me, I am unable to find any materials to satisfy the twin conditions in section 37 of the Act. Therefore, I do not think that this is a fit case in which bail can be granted to the petitioner.

In such circumstances, this bail application is dismissed. Sd/- ZIYAD RAHMAN
A.A. JUDGE DG/4.7.23 B.A.No.4761/23 6 APPENDIX OF BAIL APPL. 4761/2023
PETITIONER ANNEXURES Annexure 1 TRUE COPY OF THE FIRST
INFORMATION REPORT IN CRIME NO. 658/2021 OF KORATTY POLICE
STATION, THRISSUR DISTRICT Annexure 2 TRUE COPY OF THE
PROCEEDINGS DATED

07.06.2023 PUBLISHED IN THE OFFICIAL WEBSITE OF E-COURTS, IN S.C.
NO. 154/2022 BEFORE THE HONORABLE FOURTH ADDITIONAL DISTRICT
AND SESSIONS COURT, THRISSUR

Annexure 3 TRUE COPY OF THE COMMON ORDER DATED 31.05.2023 IN B.A.
NO. 4079/2023 AND B.A. NO.6339/2022 PASSED BY THIS HONORABLE
COURT Annexure 4 TRUE COPY OF THE COMMON ORDER DATED
12.06.2023 IN B.A. NO. 4208/2023, B.A. NO. NO.4378/2023 PASSED BY THIS
HONORABLE COURT Annexure 5 TRUE COPY OF THE ORDER DATED
09.06.2023 IN B.A. NO. 4153/2023 PASSED BY THIS HONORABLE COURT

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