

Vivek vs State of Kerala

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Court : Kerala Orders

Decided On : Jul-27-2023

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Bail Appl./5407/2023

Appellant : VIVEK

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
THURSDAY, THE 27TH DAY OF JULY 2023 / 5TH SRAVANA, 1945
BAIL APPL. NO. 5407 OF 2023 CRIME NO.348/2023 OF KARAMANA
POLICE STATION, THIRUVANANTHAPURAM

PETITIONER/6TH ACCUSED: VIVEK AGED 23 YEARS, S/O SHAJI
KUMAR, SANTHINI NAIR, V.V. SADANAM, MAVUVILA, PALLICHAL,
NEMOM P.O., THIRUVANANTHAPURAM, PIN - 695101 BY ADV
SASTHAMANGALAM S. AJITHKUMAR RESPONDENT/ STATE: STATE
OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, PIN - 682031 BY ADV RANJIT GEORGE -SR PP
THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON

27.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..2..

ORDER

Dated this the 27th day of July, 2023 This application is filed u/s 439 of the Code of Criminal Procedure seeking regular bail.

2. The applicant is the accused No.6 in Crime No.348/2023 of Karamana Police Station. The offences alleged are punishable under Sections 22(c), 29 & 27(1) of NDPS Act.

3. The prosecution case, in short, is that the accused No.1 procured MDMA from accused No.7 illegally and with the

intention to sell the same commercially, entered into conspiracy with accused Nos. 2 to 8 and engaged the applicant/accused No.6 to sell the same. Thereafter, on 2 to 5 reached at Killi Tourist Home at Killippalam, Manacaud Village and with the aid of the accused No.8 who was the receptionist of the tourist home, they stored 27.020 grams of MDMA in room No.112 in the 3 rd floor of the said tourist home. It is further alleged that the accused No.1 kept 44.11 grams ..3..

of MDMA at his house, M.R.Nivas, T.C.57/2862 at Chithranjali Studio Junction, Thiruvallam, for the purpose of sale in contravention of the provisions of the NDPS Act. It is also alleged that it was the applicant/accused No.6 who took the accused Nos. 1 and 2 to Bangalore in his car and advanced money to the accused No.1 to purchase the MDMA and entrusted the same to him for keeping in his house till he returned to the home town and thereby committed the offence.

4. I have heard Sri.Sasthamangalam S. Ajithkumar, the learned counsel for the applicant and Sri.Ranjit George, the learned Senior Public Prosecutor. Perused the case diary.

5. The learned counsel for the applicant submitted that

the applicant is innocent and has been falsely implicated in the present case. The counsel further submitted that no materials are on record to connect the applicant with the alleged crime; hence, he is entitled to get bail. On the other hand, the learned Public Prosecutor submitted that the alleged incident occurred as a part of the intentional criminal acts of the

..4.. applicant, and he is not entitled to bail at this stage.

6. The applicant was arrested on 18/05/2023 and he is

in judicial custody. A perusal of the case diary would reveal that the accusation against the applicant is very serious, and it prima facie shows a premeditated criminal act on his part. The case diary reveals that prima-facie there are materials on record to show the involvement of the applicant in the crime. It is true that there is no recovery from the possession of the applicant. However, the total quantity of contraband seized from the accused No.1 is 71.13 grams of methamphetamine. It is a commercial quantity. Even though, there is no recovery from the possession of the applicant, the investigation reveals that the applicant along with the accused Nos. 1 and 2 travelled to Bangalore for the purchase of contraband. It is also revealed in the investigation that, the applicant has transferred huge money from his account to the accused Nos.1. The call details also prove the involvement of the applicant. Since the quantity involved is a commercial quantity, the jurisdiction of this Court to grant bail is circumscribed by

..5.. the provisions of Section 37 of the NDPS Act. Bail can be granted in a case where there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. Having heard the submissions and after having gone

through the materials on record, I am affirmed that there are no substantial or probable causes for believing that the applicant is not guilty of offences charged. The applicant has not been able to point out the existence of any such facts or circumstances as are sufficient to justify recording and finding that he is not guilty of the offence charged. Considering the gravity of the offence and the circumstances mentioned above, I am of the view that the applicant cannot be

released on bail at this stage. The bail application, accordingly, is dismissed.

Sd/- DR. KAUSER EDAPPAGATH JUDGE APA ..6.. APPENDIX OF BAIL APPL.
5407/2023 PETITIONER'S ANNEXURES Annexure 1 THE TRUE COPY OF
REMAND APPLICATION OF A6 CRIME NO. 348/2023 OF KARAMANA POLICE
STATION, THIRUVANANTHAPURAM DISTRICT Annexure 2 THE TRUE COPY
OF THE ORDER DATED ADDITIONAL SESSIONS COURT-1,
THIRUVANANTHAPURAM Annexure 3 THE TRUE COPY OF THE ORDER IN
BAIL APPLN. BAIL APPLN. NO. 4106/2023 OF THIS HON'BLE COURT DATED
14/7/2023

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