

Afsal vs State of Kerala

Afsal vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1372465

Court : Kerala Orders

Decided On : Jul-24-2023

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

Appeal No. : Bail Appl./5511/2023

Appellant : AFSAL

Respondent : State of Kerala

Judgement :

BAIL APPL. NO. 5511 OF 2023 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
MONDAY, THE 24TH DAY OF JULY 2023 / 2ND SRAVANA, 1945 BAIL
APPL. NO. 5511 OF 2023 CRIME NO.710/2022 OF ANGAMALY
POLICE STATION, ERNAKULAM PETITIONER/ACCUSED NO.1:
AFSAL AGED 23 YEARS S/O PAREETH, THAZHATHAN HOUSE,
VAZHAKULAM KARA, SOUTH VAZHAKULAM P.O, ERNAKULAM
DISTRICT ., PIN - 686670. BY ADVS. SALIM V.S. A.M.FOUSI A.B.AJIN
RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM., PIN - 682031.

OTHER PRESENT: ADV. SREEJA V - SR PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: BAIL APPL. NO. 5511 OF 2023 2 ZIYAD RAHMAN, A.A, J BA No. 5511 of 2023 th Dated this the 24 day of July, 2023

ORDER

The petitioner is the first accused in Crime No.710/2022 of Angamaly Police Station, Ernakulam District. The said crime was registered for the offences punishable under Sections 8(c), 22(c) and 29 of the NDPS Act, 1985.

2. The prosecution case is that, on 8.7.2022, at about nd rd 2.30 pm, the petitioner along with 2 and 3 accused were

found in possession of 0.630 gms of Methamphetamine Hydrochloride kept in a pouch at the backseat of a Ford Figo car bearing registration No.KL-07 BW 0634 owned by the petitioner. Immediately, the petitioner along with the accused 2 and 3 were arrested and on the basis of the confession made by the petitioner, a search was conducted in the residence of the petitioner. During the course of it, accused Nos.4 and 5 were found, and from the information received, from the said accused, recovery of 376.71 gms Methamphetamine Hydrochloride was affected from a motor cycle in possession of th the 5 accused. BAIL APPL. NO. 5511 OF 2023 3

3. The crime was registered in such circumstances and

the petitioner was arrested on 08.07.2022. Since then, he has been under judicial detention. This application for regular bail is submitted in such circumstances.

4. Heard Sri.Salim V S, the learned counsel appearing for the petitioner and Smt. Sreeja V, the learned Senior Public Prosecutor appearing for the State.

5. The learned counsel for the petitioner submits that,

the petitioner is innocent of all the allegations. It is pointed out that the petitioner is in judicial custody since 8.7.2022 and final report is also submitted. In such

circumstances, there is no purpose in keeping the petitioner in judicial detention any further. The learned counsel also reliance upon the decision rendered by this court in Fasil Vs State of Kerala 2023 (3) KHC 212, wherein it was observed by this court that when the chances of completing the trial in near future is remote, the

rigour under Section 37 of the NDPS Act would get diluted.

6. The learned Public Prosecutor opposes the said

application by pointing out that, even though, the quantity of the contraband article recovered from the car belonging to the petitioner is small, during the investigation, huge quantity was BAIL APPL. NO. 5511 OF 2023 4 recovered based on the confession made by the petitioner and also the other accused. The specific case of the prosecution is that, accused Nos.1 to 3 went to Bangalore, for the purpose of procuring the articles. They together purchased the contraband articles and taken a small portion ie., 0.630 gms of Methamphetamine for their personal consumption and the rest of the contraband articles were entrusted to fourth accused for the purpose of transportation of the same to Kerala. It is also pointed out that, during the period from 1.6.2022 to 8.7.2022, there were regular phone calls, ie., 104 calls between first accused and fifth accused, 188 phone calls between fifth accused and third accused and 21 calls between fifth accused and fourth accused. Besides the same, the investigating officer also collected certain materials indicating source of the amounts, utilised by the petitioner for the purpose of purchase of the contraband articles. It is also highlighted by the learned Public Prosecutor that, on the relevant date, the accused Nos.1 to 3 stayed together, at SLN Suites, Bangalore, and procured

the contraband articles. To substantiate

circumstances, there are ample materials indicating the role of the petitioner and the quantity involved is high. Therefore, dismissal of the bail application was sought.

7. I have gone through the records. As rightly pointed out by the learned Public Prosecutor, the role of the petitioner is very much evident. Even though, the

learned counsel for the

petitioner contends that, the quantity recovered from the possession of the petitioner was very small, a perusal of the entire materials would indicate that the entire quantity of the contraband articles, which was recovered from the accused

persons, is very huge. The prosecution's case is that the petitioner along with the accused Nos.1 and 2 have procured the contraband articles from Bangalore and the same is sought to be substantiated with the help of various materials such as, call data records, the tower location and also the details collected from the accused persons who travelled together at

Bangalore. When all the aforesaid aspects are taken into consideration, I am of the view that, this is not a fit case in which bail can be granted to the petitioner. It is true that, as pointed out by the learned counsel for the petitioner in *Fasils* case cited (*supra*), this court made certain observations with BAIL APPL. NO. 5511 OF 2023 6 regard to the circumstances under which the rigour under Section 37 of the NDPS Act would get diluted. It is to be noted that, in the said case, the quantity involved was just above the commercial quantity, whereas, in this case, the quantity involved is 7 times of the commercial quantity. Besides the same, in *Fasils* case, this court only observed that the rigour under Section 37 of the NDPS Act would get diluted in certain circumstances, which would mean that the intensity of the rigour would become lessor.

8. In such circumstances, I am of the view that, the conditions contemplated Rigour under Section 37 of the NDPS Act as such cannot be avoided. When taking into account all the aforesaid aspects, I do not find any merit in this bail application. Accordingly, this bail application fails and is dismissed. sd/- ZIYAD RAHMAN, A.A, JUDGE R.AV

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com