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Prasanthkumar vs State of Kerala

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Court : Kerala Orders

Decided On : Aug-16-2023

Judge : Honourable Mr.Justice K. Babu

Appeal No. : Bail Appl./6079/2023

Appellant : Prasanthkumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU WEDNESDAY, THE 16TH DAY OF AUGUST 2023 / 25TH SRAVANA, 1945 BAIL APPL. NO. 6079 OF 2023 AGAINST CRMC 2203/2023 OF DISTRICT COURT & SESSIONS COURT, PALAKKAD IN CRIME NO.47/2021 OF EXCISE ENFORCEMENT AND ANTI NARCOTIC SPECIAL SQUAD, PALAKKAD PETITIONER/ACCUSED NO.10: PRASANTHKUMAR, AGED 41 YEARS, S/O NANDAKUMAR, PUTHALATH, NANDANAM, KALAMASSERY, THRIKKAKARA, ERNAKULAM, PIN - 682021 BY ADVS. SRI.C.Y.VINOD KUMAR SRI.C.ANILKUMAR (KALLESSERIL) SRI.P.M.MANASH RESPONDENT/COMPLAINANT: 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT

OF KERALA, PIN - 682031 2 CIRCLE INSPECTOR OF EXCISE, EXCISE & ENFORCEMENT AND ANTI NARCOTIC SPECIAL SQUAD, 3RD FLOOR, MUNICIPAL COMPLEX, TOWN BUS STAND, PALAKKAD, PIN - 678001 BY ADV. SRI.N.R.SANGEETHA RAJ, PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BABU, J.

---------- B.A No. 6079 of 2023 ---------- Dated this the 16th day of August, 2023

ORDER

This is an application filed under Section 439 of the Code of Criminal Procedure.

2. The petitioner is accused No.10 in Crime No.47/2021 of Excise Enforcement and Anti Narcotic Special Squad, Palakkad. The petitioner and the other accused are alleged to have committed offences punishable under Sections 20(b)(ii)(c), 27-A, 28, 29 and 30 of the NDPS Act, 1985.

3. The prosecution case in brief is as follows:- 3.1. Accused Nos.1 to 10 entered into a criminal

conspiracy for possession and transportation of ganja. Pursuant to the conspiracy, while they were transporting ganja on 12.09.2021 at about 7.25 a.m., along the Salem- Kanyakumari NH at Padinjare Yakkara in a tourist bus bearing registration No.KL-40-H452 driven by accused No.1, and cars bearing registration Nos.KL-07-CG-4567 and KL-33-G-6670,

the Excise Circle Inspector of Excise Enforcement Squad intercepted the vehicles. The Excise team seized 82.5 Kgs of dried ganja from the bus. They also seized 42.5Kgs of dried ganja from the car bearing registration No.KL-07-CG-4567 and 20.5Kgs of dried ganja from another car bearing registration No.KL-33-G-6670.

Accused Nos. 2 and 3 were in the car bearing registration No.KL-07-CG-4567. Accused Nos. 4 and 5 were found in the car bearing registration No.KL-33-G-6670. Accused No.1, as per the directions of accused No.6, transported the ganja from Andra Pradesh with the assistance of accused Nos. 2, 3, 4, 5, 6, 9 and 10.

4. The petitioner was arrested on 20.01.2023 and has been in judicial custody since then.

5. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

6. The learned counsel for the petitioner submitted that the prosecution failed to establish the necessary ingredients to attract the offences alleged against the petitioner.

7. The learned Public Prosecutor submitted that materials are sufficient to establish the involvement of the petitioner in this crime.

8. I have gone through the Case Diary produced by the learned Public Prosecutor. From the Case Diary, it is

revealed that on the relevant day, the petitioner travelled along with accused No.6, who is the kingpin of the crime, and both of them escaped from the scene of occurrence and travelled together in a car bearing registration No.KL-43 E

4576. The prosecution placed materials to show that both of them were together on the relevant time as part of the commission of the alleged offences.

9. The learned Public Prosecutor further submitted

that the bank transactions of accused No.6 would reveal that he had maintained constant transactions with accused No.10. The prosecution alleges that the amounts involved in those transactions were out of the proceeds of the crime.

10. The learned Public Prosecutor submitted that the rigor contained in Section 37 of the NDPS Act is applicable to the present facts and circumstances. As per Section 37 of the NDPS Act, if the Public Prosecutor opposes the bail application,

the Court must satisfy that there are reasonable grounds for believing that the accused is not guilty of such offence and only then the bail can be granted.

11. The learned Public Prosecutor further submitted that the Investigating Agency submitted final report as early as on 19.05.2023.

12. As far as the petitioner is concerned, the twin

conditions which really have relevance are (1) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offences (2) that he is not likely to commit any offence while on bail.

13. The above conditions are cumulative and not

alternative. It is pertinent to note that the satisfaction contemplated in the provision regarding the accused being not guilty has to be based on reasonable grounds. The prosecution has placed before this Court the reasonable grounds to attract the rigor contained in Section 37 of the NDPS Act. The provision contemplates the substantial probable process for believing that the accused is not guilty of the alleged offences.

14. Having considered the arguments on both sides

and the records produced by the prosecution, I am of the view that the limitations in granting bail as contained in Section 37 of the NDPS Act are applicable to the present situation and the petitioner is not entitled to bail. In view of the above circumstances, the bail application stands dismissed. Sd/- K.BABU JUDGE VPK APPENDIX OF BAIL APPL. 6079/2023 PETITIONER ANNEXURES Annexure 1 TRUE COPY OF THE ORDER DATED 03/06/23 IN CRL MC NO. 2203/23 OF THE HON'BLE SESSIONS COURT, PALAKKAD

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