

Athul vs State of Kerala

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Court : Kerala Orders

Decided On : Feb-27-2023

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : Bail Appl./9803/2022

Appellant : ATHUL

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
MONDAY, THE 27TH DAY OF FEBRUARY 2023 / 8TH PHALGUNA,
1944 BAIL APPL. NO. 9803 OF 2022 CRIME NO.248/2022 OF Angamali
Police Station, Ernakulam AGAINST THE ORDER/JUDGMENTCRMC
1883/2022 OF DISTRICT COURT & SESSIONS COURT, ERNAKULAM
PETITIONER/ACCUSED NO.13: ATHUL,AGED 20 YEARS,S/O
SANTHOSH, PALAKKAL HOUSE, SAMAJAM, KALLARA ROAD, NEAR
THAIKKADU TEMPLE, THRIPPUNITHURA, EROOR WEST,
ERNAKULAM, PIN - 682306 BY ADV N.A.SHAFEEK
RESPONDENT/COMPLAINANT: STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

- 682031 BY SR.PP SRI C.K.SURESH THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: BA No.9803 of 2022 2

VIJU ABRAHAM, J.

..... B.A. No.9803 of 2022
..... Dated this the 27th day of
February, 2023

ORDER

This is an application for regular bail.

2. The petitioner herein is implicated as the 13th accused in

Crime No.248 of 2022 of Angamaly Police Station, Ernakulam District registered alleging commission of offences punishable under Sections 20(b)(II)(B), 20 (b)(ii) (C) 8(c), 27(A) and 29 of the Narcotic Drugs and Psychotropic Substances Act (for short, NDPS Act).

3. The prosecution allegation is that on 05.03.2022 at 11.45

p.m., the petitioner along with other accused were found in possession of 11.30 kgs. of ganja and 1.525 kgs of hashish oil which were recovered from the car bearing registration No. KL-07-AV-2050 belonging to the 1st accused parked at the parking area of Federal City Flat at old bridge road in Karukutty Village and thereby committed the aforesaid offences.

4. It is submitted that the petitioner was implicated in the

above case due to mistaken identity. He has no connection with the alleged incident. He is innocent of the allegation levelled against him. The petitioner was arrested in connection with the above case on BA No.9803 of 2022 3

23.04.2022 and remanded to judicial custody. Applications for regular bail were filed by the petitioner before the Sessions Court, Ernakulam as CrI.M.C.No.1136 of

2022, CrI.M.C. No.1583 of 2022 and CrI.M.C.1883 of 2022. By order dated 24.05.2022, 16.07.2022 and 24.08.2022 all the applications were dismissed by the Sessions Court, Ernakulam. The prolonged custody of the petitioner is not at all required. Petitioner submits that he has been roped in an accused only for the reason that he was having banking transactions with the 4 th accused and that on a perusal of the bank statement it can be seen that the above transactions are in no way connected with the alleged offence. The specific case of the petitioner is that he was having business of selling pet dogs in his residential home which was disclosed by him before the officer concerned while they made enquiry in connection with freezing of the bank account. Apart from that no other link is available so as to connect the petitioner with the alleged offence. Petitioner further submitted that he is a student.

5. Learned Public Prosecutor opposed the bail application

mainly contending that 11.130 kgs of ganja and 1.525 kgs of hashish oil were found concealed in the back seat of a car in possession of the 1st accused and the same was recovered from the said car which was parked in the parking shed in the backside of the Federal City Flats. The specific case of the prosecution is that accused Nos.1 to 13 conspired together and accused Nos.1, 2 and 9 on 23.02.2022

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purchased the contraband from the 6th accused and brought the said contraband having 60 kgs of ganja and 4 kgs of hashish oil from Odissa State in an Innova car bearing registration No. MH-04-GD- 2266 which is kept in use by the 2 nd accused and the same was brought to Oceanus Crescent Flat and accused Nos. 2, 10 and 11 separated the same to various packets and tins and was given for sale to accused Nos. 3, 4, 5, 7 and 12 and the ganja purchased by the 4 th accused was sold to the petitioner herein and he has transferred the purchase amount to the account of the 4th accused. The investigation revealed that there are financial transactions between the accused for the transfer of sale proceeds and that it is the balance of the said total contraband that was seized from the car. It is also submitted that petitioner is involved in conspiracy and further that petitioner is

involved in 3 other criminal cases of which two are under the NDPS Act. It is also submitted that bail applications of accused Nos.1, 3 and 7 are considered and dismissed by this Court as per order dated 22.09.2022 in B.A. No. 4929 of 2022 and connected cases. Learned Public Prosecutor further submitted that the prosecution allegation is that the total quantity of contraband involved in this case is 60 kgs of ganja and 4 kgs of hashish oil. The specific allegation against the petitioner herein is that from the quantity of the contraband purchased by the 4th accused the same was sold to the petitioner herein and the amount for the same was transferred to the account of the 4 th accused.

BA No.9803 of 2022 5 The contentions raised by the petitioner were considered in detail by this Court as per Annexure-D order. Considering the facts and circumstances of the case and

nature of allegations and taking into consideration the involvement of the petitioner in three other criminal cases out of which two are under the NDPS Act, I am not inclined to grant bail to the petitioner since the rigor of Section 37 of the NDPS Act will definitely come into play. Since the petitioner is in custody from 23.04.2022 onwards and that the final report has been filed, I am inclined to issue a direction to the trial court concerned to expedite the trial of the case and conclude the same preferably within a period of six months from today. It is made clear that if the trial of the case is unduly delayed, it will be open to the petitioner to approach this Court or the trial court concerned seeking for bail.

With the abovesaid observation, the bail application is dismissed. Sd/- VIJU ABRAHAM JUDGE cks

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