

Shamnad, vs State of Kerala,

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Court : Kerala

Decided On : Nov-30-2023

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Bail Appl./10226/2023

Appellant : Shamnad,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH
AGRAHAYANA, 1945 BAIL APPL. NO. 10226 OF 2023 CRIME
NO.1404/2023 OF KUNDARA POLICE STATION, KOLLAM AGAINST
THE ORDER IN CRMC 2230/2023 OF DISTRICT COURT & SESSIONS
COURT,KOLLAM CRMC 1993/2023 OF DISTRICT COURT &
SESSIONS COURT,KOLLAM

PETITIONERS/ACCUSED NOS.3 TO 5:

1 SHAMNAD, AGED 23 YEARS, S/O ABDUL RAHMAN, KADAYIL VEEDU, KULATHINKARA BHAGAM, KUREEPPALLY, PERUMPUZHA PO, KOLLAM, PIN - 691504 2 UMER FAROOQ, AGED 20 YEARS, S/O JALALUDEEN, FAROOQ MANZIL, NEAR GOMATHI SAW MILL, CHANDANATHOPE PO, PERINAD, KOLLAM, PIN - 691014 3 MUHAMMAD SALASH, AGED 23 YEARS, S/O SALIM, PALLIVADAKKATHIL VEEDU, CHATHINAMKULAM, CHANDANATHOPE PO, PERINAD VILLAGE, KOLLAM, PIN - 691014 BY ADVS. C.R.JAYAKUMAR NOBEL RAJU ALEENA JOSE

RESPONDENTS/COMPLAINANT: 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 THE STATION HOUSE OFFICER, KUNDARA POLICE STATION, KOLLAM, PIN - 691501 BY T.V.NEEMA-SR.PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 30th day of November, 2023 This application is filed u/s 439 of the Code of Criminal Procedure seeking regular bail.

2. The applicants are the accused Nos.3 to 5 in Crime

No.1404 /2023 of Kundara Police Station. The offences alleged are punishable under Sections 8, 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act (for short, the NDPS Act hereinafter).

3. The prosecution case, in short, is that on 14.07.2023 at

around 10.50 a.m, the applicants, along with the accused Nos. 1 and 2, were found in possession of 85.250 grams of MDMA while they were travelling in a car bearing registration No. KL-02-AD- 0004, and thereby committed the offences.

4. I have heard Sri.C.R.Jayakumar, the learned counsel for the applicants and Smt. T.V. Neema, the learned Public Prosecutor. Perused the case diary.

5. The learned counsel for the applicants submitted that the applicants are innocent and have been falsely implicated in the

present case. The counsel further submitted that no materials are on record to connect the applicants with the alleged crime; hence, they are 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 applicants, and they are not entitled to bail at this stage.

6. The applicants were remanded to judicial custody on

14.07.2023 and since they are in judicial custody. A perusal of the case diary would reveal that the accusation against the applicants is very serious, and it prima facie shows a premeditated criminal act on their part. The applicants, along with the accused Nos. 1 and 2, were admittedly travelling in the car. As per the prosecution version, 3.170 grams of MDMA was seized from the possession of A3; 4.670 grams of MDMA was seized from the possession of A4; and 4.670 grams of MDMA was seized from the possession of A5. The learned counsel for the applicants submitted that the quantity of MDMA seized from the possession of each applicant is only an intermediate quantity, and hence, the rigour under Section 37 of the NDPS Act would not apply. I cannot subscribe to the said argument. Apart from that, 63.400 grams of MDMA was seized from the car. Since the quantity involved is commercial quantity,

the jurisdiction of this Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. Bail can be granted in a case where there are reasonable grounds to believe that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The counsel for the applicants is not able to point out the existence of any such facts or circumstances as are sufficient to justify recording a finding that they are not guilty of the offences charged.

Considering the submission and after having gone through the materials on record, and also considering the gravity of offences, I am of the view that the applicants cannot be released on bail at this stage. The bail application, accordingly, is dismissed.

Sd/- DR. KAUSER EDAPPAGATH JUDGE mtk APPENDIX OF BAIL APPL. 10226/2023 PETITIONER ANNEXURES Annexure A1 TRUE COPY OF THE FIR IN CRIME NO. NO.1404/2023 KUNDARA POLICE STATION, KOLLAM Annexure A2 TRUE COPY OF THE REMAND APPLICATION IN CRIME NO. NO.1404/2023 KUNDARA POLICE STATION, KOLLAM Annexure A3 TRUE COPY OF THE ORDER IN CRL.M.C. NO. HON'BLE PRINCIPAL SESSIONS COURT, KOLLAM Annexure A4 CERTIFIED COPY OF THE ORDER IN CRL.M.C. NO. HON'BLE PRINCIPAL SESSIONS COURT, KOLLAM

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