

Rahul. C vs the Excise Inspector

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Court : Kerala Orders

Decided On : Jan-23-2023

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : Bail Appl./10206/2022

Appellant : Rahul. C

Respondent : The Excise Inspector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
MONDAY, THE 23RD DAY OF JANUARY 2023 / 3RD MAGHA, 1944
BAIL APPL. NO. 10206 OF 2022 CRIME NO.29/2022 OF Manjeri Excise
Range Office, Malappuram AGAINST THE ORDER/JUDGMENTBail
Appl. 8831/2022 OF HIGH COURT OF KERALA PETITIONER/2nd
ACCUSED: RAHUL. C.,AGED 22 YEARS S/O. SIVASANKARAN,
KRISHNA HOUSE, ANAKALLU DESOM, VALILLAPUZHA P.O., ERNAD
TALUK, KEEZHUPARAMBA AMSOM' MALAPPURAM DISTRICT, PIN -
673639 BY ADVS. T.G.RAJENDRAN T.R.TARIN
RESPONDENTS/COMPLAINANT & STATE: 1 THE EXCISE
INSPECTOR MANJERI EXCISE RANGE OFFICE, MANJERI,

MALAPPURAM, PIN - 676121 2 THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031 BY PP SMT.SEETHA S. THIS
BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
23.01.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: BA No.10206 of 2022 2

VIJU ABRAHAM, J.

..... B.A. No.10206 of 2022
..... Dated this the 23rd day of
January, 2023

ORDER

This is an application for regular bail.

2. The petitioner is the 2nd accused in Crime No. 29 of 2022 of Excise Range Office, Manjeri alleging commission of offences punishable under Sections 22 (c) and 29 of the NDPS Act.

3. The prosecution allegation is that on 24.09.2022 the

petitioner along with the 1st accused was found to have possessed and transported 8.411 grams of LSD stamp and the contraband article was transported using courier service and the petitioner along with the 1st accused was arrested on 24.09.2022 in front of the office of the courier agency.

4. The petitioner submits that he has been falsely implicated in

the above said crime. Petitioner submits that there is procedural violation and further that the only allegation against A1 is that his telephone number is shown in the box as C/o P.P. and therefore the parcel is intended for some other person. Petitioner submits that he was arrayed as an accused only for the reason that he was found near the scooter and it cannot be concluded that a person receiving a

parcel have knowledge of the content of the parcel. Petitioner has a further contention that he has absolutely no involvement in the alleged crime and he has not participated in the transportation of alleged contraband articles through courier service. Only allegation against the 1st accused is that his telephone number is shown in the box as 'c/o. P P.' and if that be so it was intended for some other person. So far as the petitioner is concerned there is absolutely no allegation that he was in any way concerned with the transaction and the only allegation against the petitioner is that he was seen near the scooter. In order to attract Section 29 of the NDPS Act abatement and conspiracy must be proved there and there is no instance of any abatement and conspiracy as far as the petitioner is concerned.

5. Learned Public Prosecutor opposed the application for

bail mainly contending that on a secret information the petitioner and the 1st accused were apprehended along with 8.411 grams of LSD stamps. On the basis of the investigation, the petitioner was arrayed as 2nd accused whereas the owner of the scooter was arrayed as 3rd accused and the person who directed accused Nos.1 and 2 to receive the parcel from the courier office was arrayed as 4 th accused. Learned Public Prosecutor specifically submitted that the petitioner was also found along with the 1st accused while the alleged seizure was made and the seizure is of an commercial quantity. In further investigation the CDRs of the mobile phones are examined which revealed that

accused Nos.1 to 4 have constant call contacts and that the 4 th accused is involved in the sale of narcotic drugs and the petitioner has also helped the 4th accused in the sale of the alleged contraband. The investigation also revealed that accused Nos.1 to 4 have monetary transactions between them. Learned Public Prosecutor further submitted that the investigation is only at the initial stage and the petitioner shall not be released on bail at this stage.

6. The contention of the petitioner is that he has absolutely no involvement in the crime except for the fact that he was found along with the 1st accused at the time the alleged seizure of the

contraband. But going by the prosecution case as stated by the learned Public Prosecutor other than the presence of the petitioner and he was arrested along with contraband, the investigation revealed that the petitioner has call contacts with all the other accused and further that there are monetary transactions also between accused Nos.1 to 4. As regards the contention of the petitioner regarding conscious possession, the learned Public Prosecutor relies on the decisions in Kulwinder Singh and another v. State of Punjab - 2015 KHC 3116, Sujit Tiwari v. State of Gujarat and another - (2020) 13 SCC 447, Mohan Lal v. State of Rajasthan - (2015) 6 SCC 222, Union of India v. Rattan Mallik @ Habul - 2009 KHC 4151, Madan Lal and another v. State of Himachal Pradesh - 2003 KHC 1550, Baldev Singh v. State of Haryana - 2015 KHC 4738, Abdul Rashid

BA No.10206 of 2022 5 v. State of Gujarat - 2000 KHC 237 and Dharampal Singh v. State of Punjab - 2010 KHC 4698 to contend for the proposition that the contention of the petitioner that no contraband was seized from his possession will not absolve him of the liability under Section 37 of the NDPS Act. I have considered the bail application of the petitioner

earlier and dismissed the same as per Annexure-2. Now the investigation thereafter conducted clearly brings out various other aspects including the monetary transactions as well as call contacts between the accused persons and therefore the alleged contraband being of a commercial quantity, I am not inclined to grant bail to the petitioner at this stage.

Bail application is accordingly dismissed. Sd/- VIJU ABRAHAM JUDGE cks

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