

Ansals vs State of Kerala

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Court : Kerala

Decided On : Feb-09-2022

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : Crl.MC/40/2022

Appellant : ANSAL

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH
WEDNESDAY, THE 9TH DAY OF FEBRUARY 2022 / 20TH MAGHA,
1943 CRL.MC NO. 40 OF 2022 AGAINST THE ORDER DATED
23.12.2021 IN CRL.M.P.NO.2010/2021 OF II ADDITIONAL DISTRICT
AND SESSIONS COURT, ERNAKULAM
PETITIONER/RESPONDENT/ACCUSED NO.1: ANSAL, AGED 34
YEARS, S/O.SHAMSUDHEEN, MATTATHIL HOUSE, IDIVETTY KARA,
KARIKKODU, THODUPUZHA NOW RESIDES AT A RENTAL HOUSE
OF NAJMA, MARIYIL HOUSE, IDIVETTY KARA, KARIKKODU
VILLAGE, THODUPUZHA BY ADVS. SRI.P.VIJAYA BHANU (SR.)
SRI.P.M.RAFIQ SRI.M.REVIKRISHNAN SMT.MITHA SUDHINDRAN

SMT.SRUTHY N. BHAT SRI.AJEESH K.SASI SRI.RAHUL SUNIL
RESPONDENT/PETITIONER/STATE: STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN-682 031 BY SRI. ARAVIND V MATHEW,
PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME
UP FOR ADMISSION ON 09.02.2022, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:

ORDER

Dated this the 09th day of February, 2022 This petition is filed by the 1 st accused
in Crime No.1393/2020 of Angamaly Police Station seeking to set aside an

order passed by Additional District and Sessions Court-II,

Ernakulam (for short the court below) in Crl.M.P.No.2010/2021, cancelling the bail
already granted to him in the above crime.

2. It was contended in Crl.M.P.No.2010/2021 filed by the

prosecution before the court below that the petitioner who was granted bail by
order dated 12.01.2021 in Crl.M.C.No.01/2021 has violated condition No.4
imposed not to involve in any other crime

of similar nature while on bail. It was contended by the prosecution before the
court below that the petitioner herein had violated the said condition by committing
another offence of like nature and causing Crime No.1521/2021 to be registered
against him at Thodupuzha Police Station. The petitioner was remanded to
custody on 01.10.2021 in Crime No.1521/2021 and he was in

judicial custody as RP No.8571. In the above circumstances
Crl.M.P.No.2010/2021 was filed by the prosecution seeking for cancellation of bail
already granted to him in Crime No.1393/2020 of Angamaly Police Station.

3. Notice was served on the petitioner herein in the above application. Counter
statement was filed contending that

arraignment of the petitioner as an accused in Crime No.1521/2021 of Thodupuzha Police Station was solely based on confession statement of the 1st accused in that crime. According to him not even a whisper was made about the involvement of the petitioner in the remand report. Contrabands were not alleged as seized from his possession. According to him only for cancellation of the bail granted to him in Crime No.1393/2020 of Angamaly Police Station that he was implicated as an accused in Crime

No.1521/2021 of Thodupuzha Police Station. The further contention was that he had met with an accident on 21.09.2021 and had undergone treatment in Holy Family Hospital, Muthalakodam, Thodupuzha. Bail was granted by the Special Judge for NDPS Act Cases, Thodupuzha in Crime No.1521/2021. It was observed by the court below that Sub-Section (2) of Section 439 of the Code of Criminal Procedure, 1973 (for short Cr.P.C) empowers a Court of Session to pass an order to cancel the bail, when any of the conditions imposed while granting bail was violated. The court has also observed that the accused failed to

comply with condition No.4 of the bail order intentionally and held

in that context that bail granted is liable to be cancelled and accordingly did so.

4. This Court has directed the learned Public Prosecutor to produce the Case Diary in Crime No.1521/2021 of Thodupuzha Police Station which is the crime registered against the petitioner

secondly, alleging commission of offences punishable under Sections 20(b)(ii) B and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short NDPS Act). It is noticed that the confession statement alone is the only incriminating material to base registration of Crime No.1521/2021. The learned Public Prosecutor also did not point out any material apart from the confession statement to base implication of the petitioner in Crime

No.1521/2021 of Thodupuzha Police Station. Therefore, reliable and admissible evidence is totally lacking in the case. When cancellation of bail already granted is

applied for, the court has to apply its mind to the incriminating circumstances that led to the incorporation of name of the petitioner in the array of the accused. In the case on hand it is found that the court below has not applied its mind to the materials available, based on of which Crime No.1521/2021 of Thodupuzha Police Station was registered against the petitioner. In the above circumstances, this Court is inclined to allow the application.

In the result, the Crl.M.C stands allowed. Annexure-A3 order

passed by the court below cancelling bail of the petitioner in Crime

No.1393/2020 of Angamaly Police Station is set aside. The order

granting bail to the petitioner in Crl.M.C.No.01/2021 in Crime No.1393/2020 of Angamaly Police Station dated 12.01.2021 is restored. The petitioner is directed to obey the conditions imposed in the order granting bail strictly. The observation made in the order are only for the purpose of this case and not to be followed by the court while holding trial of the case. Sd/- MARY JOSEPH JUDGE NAB

APPENDIX OF CRL.M.C.NO.40/2022 PETITIONERS ANNEXURES:
ANNEXURE-A1 PHOTOCOPY OF THE APPLICATION FILED BY
RESPONDENT DATED 06.11.2021 ANNEXURE-A2 PHOTOCOPY OF
THE COUNTER AFFIDAVIT DATED 16.11.2021 ALONG WITH ITS
ANNEXURES ANNEXURE-A3 COPY OF ORDER IN
CRL.M.P.2010/2021 DATED 23.12.2021 OF II ADDITIONAL DISTRICT
& SESSIONS COURT, ERNAKULAM RESPONDENTS ANNEXURES :
NIL

//TRUE COPY// P A TO JUDGE

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