

**Salam vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1451472](https://sooperkanoon.com/1451472)

**Court :** Kerala

**Decided On :** May-31-2022

**Judge :** Honourable Mr. Justice Gopinath P.

**Appeal No. :** Bail Appl./1320/2022

**Appellant :** SALAM

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.  
TUESDAY, THE 31ST DAY OF MAY 2022 / 10TH JYAISHTA, 1944  
BAIL APPL. NO. 1320 OF 2022 CRIME NO.47/2021 OF EXCISE  
ENFORCEMENT AND ANTI NARCOTIC SPECIAL SQUAD, PALAKKAD

PETITIONER/6th ACCUSED: SALAM AGED 47 YEARS SON OF  
MUHAMMEDALI, BANGLAMPARAMBIL HOUSE THAIKATTUKARA  
P.O, ALUVA ERNAKULAM, PIN - 683106 BY ADVS. R.ROHITH  
HARISHMA P. THAMPI RESPONDENT/COMPLAINANT: STATE OF  
KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT  
OF KERALA ERNAKULAM, PIN - 682031 BY ADVS. PUBLIC  
PROSECUTOR ADDL.DIRECTOR GENERAL OF PROSECUTION(AG-

11) SRI. K.A. ANAS (PP) THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31.05.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: BAIL APPL. NO. 1320 OF 2022 2

## **ORDER**

This is an application for regular bail.

2. Petitioner is the 6th accused in Crime No.47/2021

of Excise Enforcement and Anti Narcotic Special Squad, Palakkad district, alleging commission of offence under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act).

3. Allegation against the petitioner is that he along

with the other accused in the case procured a huge quantity of ganja from Andhra Pradesh, in violation of the provisions of the NDPS Act and thereby, he and the other accused committed the offences alleged against them.

4. I had, by order dated 02.02.2022, dismissed the

bail application of the petitioner, finding that the petitioner has not been able to place any material which would suggest that he is entitled to bail notwithstanding the rigor of Section 37 of the NDPS Act.

5. Learned counsel appearing for the petitioner raised three contentions. Firstly, it is submitted that, in BAIL APPL. NO. 1320 OF 2022 3

respect of the body search conducted with regard to accused Nos.1 to 5, there is a clear violation of Section 50 of the NDPS Act inasmuch as, the right to be searched in presence of a Gazetted officer has been violated. It is submitted that the Gazetted officer present was a part of the team which intercepted the contraband and this is a clear violation of Section 50 of the NDPS Act as held by the Supreme Court in State of Rajasthan V. Parmanand and Another [2014 (5) SCC 345]. It is submitted that this

Court also in *Harris @ Chericka V. Circle Inspector of Police, Mattanchery* [2022 (1) KLD 768] took the same view following the law laid down in *Rajasthan V. Parmanand and Another* (Supra) . Secondly, it is submitted that a reading of the final report shows that the only basis on which the petitioner has been arrayed as an accused are the financial transactions between the petitioner and one Shahul Hameed. It is submitted that the said Shahul Hameed is not an accused in the case and is cited only as a witness. It is submitted that merely on the basis of financial transactions between the petitioner and a person who is not an accused in the case, it cannot be said that the petitioner was part of the conspiracy to procure ganja from Andhra Pradesh. Thirdly, it is submitted that

BAIL APPL. NO. 1320 OF 2022 4 there is admittedly no material to show that the petitioner was part of the conspiracy. It is submitted that the petitioner has been in custody for 251 days and the charge sheet was filed also arraying the petitioner as an accused only to defeat his indefensible right to obtain statutory bail.

6. Learned Public Prosecutor opposes the grant of

bail. It is submitted that in the light of the judgment of the Honble Supreme Court in *Sekhar Suman Verma V. Superintendent of N.C.B. and Another* [2016 KHC 6429], the laid law down in *Parmanand* (supra) may no longer be good law. It is submitted that in *Sekhar Suman Verma* (supra), the Supreme Court has clearly held that merely because the Gazetted officer in question was part of the batch of officers who conducted the search in that place, it could not be said that the provisions of Section 50 of the NDPS Act have been violated. It is also submitted that the question of application of Section 50 of the NDPS Act does not arise in this case as the contraband was admittedly recovered from the bus and not from the body of the accused. It is pointed out that the prosecution has received clear evidence of conspiracy and it is not the financial transactions of the petitioner with the aforesaid Shahul Hameed alone that

is a basis for arraying him as an accused. It is submitted that there is materials collected by the prosecution which would indicate that the petitioner had arranged for the bus which was coming from West Bengal to stop at Kakkinada, Andhra Pradesh and to receive the contraband for the purpose of transportation to Kerala. It is submitted that the call data records also show that the petitioner was very much available at the spot where the interception took place. However, on seeing the Excise team, the petitioner escaped from the scene. It is submitted that for the same reasons, the contention of the learned counsel for the petitioner that prosecution had hurriedly filed a final report against the petitioner to defeat his right to get statutory bail without any material being available is also not to be accepted.

7. I have gone through the judgments in Parmanand

(supra) and that of this Court in Harris @ Chericka (Supra) and also the judgment of the Honble Supreme Court in Sekhar Suman Verman (supra). I notice that this Court in Harris @ Chericka (supra) had followed the law laid down in Parmanand (supra). I also notice that the attention of this Court was not drawn to the later judgment of the Honble Supreme Court in Sekhar Suman Verma (supra) where a

view different from the view taken in Parmanand (supra) has been taken by the Supreme Court. Therefore, following the law laid down in Sekhar Suman Verma (supra), I am not inclined to hold that there is violation of Section 50 of the NDPS Act in the facts of the present case. Secondly, as noticed in my earlier order through which I have denied bail of the petitioner, the prosecution has found materials to suggest that apart from the financial transactions, there are some circumstances including the

presence of the petitioner at the spot of interception which would indicate that the petitioner was very much part of the conspiracy to procure drugs in huge quantity from Andhra Pradesh and transport it to the State of Kerala. Apart from the above, I also find that there are no change of circumstances warranting a different view to be taken. For all these reasons, the bail application fails and stands dismissed. sd/- GOPINATH P. JUDGE

ajt

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