

Nahas vs State of Kerala

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Court : Kerala Orders

Decided On : Jul-27-2022

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : Bail Appl./1912/2022

Appellant : NAHAS

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
WEDNESDAY, THE 27TH DAY OF JULY 2022 / 5TH SRAVANA, 1944
BAIL APPL. NO. 1912 OF 2022 Crime No.14 of 2020 of Excise Range
Office, Anchal S.C.No.1156 of 2020 on the file of the Additional Sessions
Court, Kollam PETITIONER/ACCUSED NO.2: NAHAS AGED 36
YEARS, S/O.THAJUDHEEN VALLAKADAVIL HOUSE, VELLAKINAR
WARD, ALAPPUZHA PADINJARE VILLAGE, AMBALAPPUZHA
THALUK, ALAPPUZHA DISTRICT. BY ADVS. D.VIMAL DEV YEDU
KRISHNAN R. RESPONDENT: STATE OF KERALA REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA KOCHI-31 BY
ADVS. PUBLIC PROSECUTOR ADDL.DIRECTOR GENERAL OF
PROSECUTION(AG-11)

OTHER PRESENT: PP - SRI. K.A.ANAS THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27.07.2022, ALONG WITH Bail Appl..2603/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: BA Nos.1912 & 2603 of 2022 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM WEDNESDAY, THE 27TH DAY OF JULY 2022 / 5TH SRAVANA, 1944 BAIL APPL. NO. 2603 OF 2022 ACRIME NO.14 OF ANCHAL EXCISE RANGE OFFICE, KOLLAM PETITIONER/ACCUSED NO.4: KARUPPU SWAMY AGED 42 YEARS, S/O.MURUGAN RESIDING AT 9 OF 6 GURUSWAMY STREET K C ROAD SHENKOTTA VILLAGE SHENKOTTA TALUK TAMIL NADU - 627809 BY ADVS. C.RAJENDRAN B.K.GOPALAKRISHNAN RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERLA ERNAKULAM - 682031 BY PP SRI K.A.ANAS THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27.07.2022, ALONG WITH Bail Appl..1912/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: BA Nos.1912 & 2603 of 2022 3

VIJU ABRAHAM, J.

..... B.A.Nos.1912 & 2603 of 2022
..... Dated this the 27th day of July, 2022

ORDER

These are applications for regular bail. B.A. No.1912 of 2022

2. Petitioner is the 2nd accused in Crime No.14 of 2020 of

Excise Range Office, Anchal, now pending as S.C.No.1156 of 2020 on the file of the Additional Sessions Court, Kollam, registered alleging commission of offences punishable under Sections 22(c), 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, NDPS Act).

3. The prosecution case, in brief, is that on 13.08.2020 at

5.45 p.m. the Excise Circle Inspector of Aryankavu Range seized 36 strips each containing 24 capsules (total of 864 capsules) of a narcotic drug named 'spasm plus' from the possession of 1st accused while transporting the same in a vehicle bearing registration No.TN 92 C

3736. During the course of investigation, 1 st accused revealed that the contraband was given to him by the 4th accused for the petitioner and other accused and thus committed the abovesaid offences.

4. Petitioner submits that he has been falsely implicated in BA Nos.1912 & 2603 of 2022 4 the abovesaid crime only on the basis of a confession statement of co-

accused. Petitioner is in custody from 11.09.2020. Petitioner has serious health issues so also his parents. 1st accused was granted bail by the Sessions Court as per Annexure-6. The application for bail preferred by the petitioner before the Sessions Court was rejected by Annexure-7 and the bail applications filed before this Court was rejected as per Annexures-8 and 9. It is pertinent to note that the second bail application filed before this Court, i.e., B.A.No.8415 of 2020 by the petitioner was dismissed as per Annexure-9 order on the ground that successive application for bail cannot be considered unless there is a specific change in circumstance. B.A.No.2603 of 2022

5. Petitioner is the 4th accused in Crime No.14 of 2020 of Anchal Excise Range Office, Kollam registered alleging commission of offences punishable under Sections 22(c) and 29 of the NDPS Act.

6. On interrogation of the 5th accused, he revealed the

applicant's involvement also in the alleged transportation of the drug from Tamil Nadu. The petitioner was arrested consequently on 17.09.2020 and remanded to judicial custody.

7. Petitioner submits that he has been falsely implicated in the said crime and is in custody from 17.09.2020 onwards. Though the petitioner moved applications for

bail, the same were rejected by BA Nos.1912 & 2603 of 2022 5 Annexures-A1 and A2 orders. A perusal of Annexure-A2 order shows that the bail was rejected essentially for the reason that there is no change in circumstance.

9. The learned Public Prosecutor seriously opposed both the

applications for bail based on the statement filed in B.A. No.1912 of 2022 and also based on the details revealed in the investigation as is borne out from the case diary submitted that the alleged contraband was brought with the knowledge and connivance of all the accused and that the call records would reveal that the accused were in constant contact with each other and further that the bank account statements also will reveal that there are monetary transactions between the accused. Further, it was contended that there is no change in circumstance warranting consideration of the bail applications in as much as earlier applications were also dismissed on the very same ground.

10. The material evidence available against the accused

persons reveals the interstate drug transactions for selling narcotic drugs in Kerala. It is a high time to prevent such nefarious activities in the country to save the young blood from the deteriorate effect of the drug abuse. Learned Public Prosecutor strongly opposed the bail application by considering the gravity of offence and the net effect of

the drug abuse in the society at large. It is contended that in a BA Nos.1912 & 2603 of 2022 6 democratic country, the paramount consideration should be the welfare of the people. It is also contended that the future of this country rests on the young generation and if any harm on their future, that will affect the future of this country.

11. Learned counsel for the petitioners essentially relies on

the judgment of the Apex Court in Bharat Chaudhary and others v. Union of India and others, MANU/SC/1240/2021. Though several contentions were taken in the said case the court passed an order in that case essentially for the sole reason that there is no test report regarding the alleged contraband. In the present case

no such case was put forwarded by the petitioners and therefore I find that the said

judgment is not applicable in the facts and circumstances of this case.

12. Since the quantity involved is of a commercial one, the

rigor of Section 37 of the NDPS Act will come into play. Petitioners could not substantiate by cogent reasons that the twin conditions in Section 37 of the NDPS Act are satisfied so as to grant bail. I also find that petitioners could not substantiate further that there is any change in circumstance warranting consideration of the present bail applications by this Court. Both the bail applications are accordingly dismissed.

Taking into consideration the fact that the final report is already filed after investigation and the fact that petitioners are in BA Nos.1912 & 2603 of 2022 7 custody for long, there will be a direction to the trial court to expedite the trial. It is made clear that these prima facie observations are made for the limited purpose of deciding this bail application and the above opinion expressed shall not be regarded as opinion on merits, during trial. Sd/- VIJU ABRAHAM JUDGE cks

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