

Haridev vs State of Kerala

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Court : Kerala Orders

Decided On : Jul-25-2022

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : Bail Appl./4557/2022

Appellant : Haridev

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
MONDAY, THE 25TH DAY OF JULY 2022 / 3RD SRAVANA, 1944 BAIL
APPL. NO. 4557 OF 2022 CRIME NO.119/2022 OF PALLIKKAL
POLICESTATION PETITIONER/2ND ACCUSED: HARIDEV AGED 25
YEARS,S/O HARIDAS, ASWATHY, PAIVELIKONAM, 28TH MILE,
VETTIYARA, NAVAYIKULAM, TRIVANDRUM - 695603 BY ADVS.
C.Y.VINOD KUMAR C.ANILKUMAR (KALLESSERIL) P.M.MANASH
AADIL NAZARUDEEN RESPONDENT/COMPLAINANT: STATE OF
KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM - 682031 BY PUBLIC PROSECUTOR
SRI.M.C.ASHI THIS BAIL APPLICATION HAVING COME UP FOR

ADMISSION ON 25.07.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: BA No.4557 of 2022 2

VIJU ABRAHAM, J.

..... B.A.No.4557 of 2022
..... Dated this the 25th day of July,
2022

ORDER

This is an application for regular bail.

2. The petitioner has been depicted as 2 nd accused in Crime

No.119 of 2022 of Pallikkal Police Station registered alleging commission of offences the sections 20(b)(ii)(A), 22(C), 27(A) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, NDPS Act).

3. The prosecution case is that on 17.02.2022 at about 3.00

p.m. near Punnavila the 2nd accused was found in possession of MDMA and ganja for the purpose of sale. It is also alleged that the police have also recovered MDMA and an Electronic Balance from the 1 st accused, and hashish oil bottles from the 3rd accused and ganja from the 4th accused and some plastic covers and Electronic Balance from the 5 th accused and thus the police has recovered 15.060 grams of MDMA, 225.220 Grams of Ganja and 3.770 grams (including the weight of bottles) of hashish oil from the accused and thus they committed the aforesaid offences.

4. It is contended that the petitioner/2nd accused is totally innocent of all the allegations levelled against him and he is falsely BA No.4557 of 2022 3 implicated due to grave misunderstanding. The petitioner was arrested on 17.2.22 and ever since he is in custody. Even though the petitioner moved an application for bail before the Sessions Court, Thiruvananthapuram, the same was rejected by Annexure A1 order.

5. The case of the petitioner is that the police has no definite

case about how much quantity of MDMA and ganja was allegedly seized from the petitioner in as much as they have no case that they have weighed the MDMA and ganja allegedly seized from the petitioner separately. The investigation is practically over and his further custody is not required and the petitioner is in custody for more than 113 days.

6. The application was seriously opposed by the learned

Public Prosecutor mainly contending that there are materials which prima facie showed the involvement of the petitioner in the said crime. The petitioner along with other accused was found in possession of 15.060 grams of MDMA, 225.220 grams of ganja and 3.770 grams of hashish oil and some plastic packing covers and electronic balance. All the accused were arrested on the spot along with the contraband articles. Learned Public Prosecutor further submits that the petitioner is involved in six other criminal cases including one under the NDPS Act, the details of which are as given below :

(i) Crime No.1616 of 2020 registered under KEDO, (ii) Crime No.1964 of 2021 registered under Sections 323,324,342,364, and 34 of the Indian Penal Code (in short, IPC) and (iii) Crime BA No.4557 of 2022 4

No.116 of 2022 registered under Sections 323, 324, 506(ii), 307 and 34 IPC, of Kallambalam Police Station; (iv) Crime No.551 of 2021 registered under KEDO, of Varkala Police Station, (v) Crime No.1663 of 2016 registered under Section 279 IPC of Paravoor Police Station and (vi) Crime No.503 of 2021 of Neyyadom Police Station registered under Section 27(b) of the NDPS Act.

Based on the same it was contended that if the petitioner is released on bail there is every chance to intimidate the witnesses and also to repeat similar offences. It is further submitted that since the MDMA seized was of commercial quantity, the rigor of Section 37 of NDPS Act will apply in the facts and circumstances of the case. It is also submitted that most of the accused persons involved in this crime

are habitual offenders and is a real threat to the society especially young men and school-going students.

7. After considering the facts and the circumstances of the case

and the fact that the contraband is of commercial quantity and also taking into consideration the involvement of the petitioner in six other cases including one NDPS case, I am of the opinion that provisions of Section 37 of the NDPS Act will clearly apply and the petitioner could not raise any contentions to substantiate that the rigor of Section 37 of the NDPS will not apply in the facts and circumstances of the case.

BA No.4557 of 2022 5 Considering all the facts and circumstances of the case, I am not inclined to grant bail to the petitioner at this stage and the bail application is accordingly dismissed. Sd/- VIJU ABRAHAM JUDGE cks

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