

Savin Papali vs State of Kerala

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Court : Kerala

Decided On : Jul-20-2022

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : Bail Appl./4578/2022

Appellant : Savin Papali

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
WEDNESDAY, THE 20TH DAY OF JULY 2022 / 29TH ASHADHA, 1944
BAIL APPL. NO. 4578 OF 2022 CRMC 949/2022 OF ADDITIONAL
DISTRICT COURT & SESSIONS COURT - II, NORTH PARAVUR / I
ADDITIONAL MACT, NORTH PARAVUR CRIME NO.1536/2021 OF
ANGAMALY POLICESTATION, ERNAKULAM

PETITIONER/ACCUSED NO.4: SAVIN PAPALI AGED 26 YEARS S/O
LATE RONALD HEROLD PAPALI, PAPALI HOUSE, VAZHAKALA, PIN -
682030 BY ADVS. S.RAJEEV V.VINAY M.S.ANEER SARATH K.P.
RESPONDENT/STATE: STATE OF KERALA REP BY PUBLIC

PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 (CRIME NO 1536/2021 OF ANGAMALY POLICE STATION, ERNAKULAM) BY SR.PP SMT.SEETHA S. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20.07.2022, ALONG WITH Bail Appl..4606/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
WEDNESDAY, THE 20TH DAY OF JULY 2022 / 29TH ASHADHA, 1944
BAIL APPL. NO. 4606 OF 2022 CRIME NO.1536/2021 OF ANGAMALY
POLICESTATION, ERNAKULAM APPLICANT/ACCUSED NO.2: AJMAL
P.S, AGED 23 YEARS S/O SHOUKATH, PUTTINGAPARAMBIL
HOUSE, OLIKUZHAY, PADAMUGAL, KAKKANAD, ERNAKULAM, PIN -
683030 BY ADVS. PRASUN.S N.A.RETHEESH PAUL MATHEW
(PERUMPILLIL) PRAMOD DAS LOHYA
RESPONDENT/COMPLAINANT-STATE: STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM PIN - 682031 REPRESENTING THE S.I. OF
POLICE, ANGAMALY POLICE STATION,

OTHER PRESENT: SR.PP - SMT. SEETHA S. THIS BAIL APPLICATION
HAVING COME UP FOR ADMISSION ON 20.07.2022, ALONG WITH Bail
Appl..4578/2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: BA No.4578 & 4606 of 2022 3

VIJU ABRAHAM, J.

..... B.A.Nos. 4578 & 4606 of 2022
..... Dated this the 20th day of July, 2022

ORDER

These are applications for regular bail.

2. B.A.No.4606 of 2022 is filed by the 2nd accused whereas B.A.No.4578 of 2022 is filed by 4th accused. B.A.No. 4606 of 2022

3. The petitioner is belatedly arrayed as the 2nd accused along

with two others in Crime No.1536 of 2021 of Angamaly Police Station registered alleging commission of offences punishable under Sections 8, 22(c), 27 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, NDPS Act). The said crime was registered after the 1st accused who was travelling from Bangalore in the berth of a tourist bus belonging to Sona Travels bearing registration No.KL-41 R 8286 was apprehended on 01.12.2021 by the police and 48.270 grams of MDMA which was concealed inside the sponge of a helmet which was kept in a bag in his possession was seized.

4. The allegation in the present crime, in short, is that at about

6.35 a.m., near the KSRTC bus stand, Angamaly, the 1st accused was found travelling in the berth of a tourist bus belonging to Sona Travels bearing registration No.KL-41 R-8286 was apprehended on 01.12.2021 by BA No.4578 & 4606 of 2022 4 the police and 48.270 grams of MDMA which was concealed inside the sponge of a helmet which was kept in a bag in his possession was seized and that the 1st accused was thus travelling in connection with the peddling of the aforesaid drug and to make profit out of it on behalf of the all the accused.

5. Though the alleged incident was on 01.12.2021, the petitioner

was arrested on 22.03.2022. Petitioner submits on the basis of Annexure- A1 certificate that he has 40% visual disability and further on the basis of Annexures- A2 to A5 medical documents submitted that petitioners parents are suffering from various health-related issues. It is further submitted that the charge sheet is already laid and the case is now pending as S.C. No.458 of 2022 before the Sessions Court. It is a further case of the petitioner that even though the contraband was seized suspecting it to be MDMA, later in the chemical analysis, it was found that the same is methamphetamine and therefore, the quantity of the contraband is less than the commercial quantity and therefore the rigor of Section

37 will not come into play. It is contended that even going by the prosecution case, the contraband was actually transported by the 1 st accused and the same was funded by the petitioner herein. B.A. No.4578 of 2022

6. The petitioner is arrayed as the 4 th accused along with three others in the abovesaid crime on the basis of the allegation that the petitioner has got involvement in the alleged transaction. Only on the basis BA No.4578 & 4606 of 2022 5

of the allegation that the 1st accused bought the contraband for sale to the 4th accused the petitioner got arrested and apart from this vague allegation there is no other material available with the prosecution to connect the petitioner with the crime.

7. Learned Public Prosecutor upon instructions submitted that it

is true that on the basis of the chemical analysis report, the contraband was found to be methamphetamine, and it is only intermediate quantity, but submitted that the quantity involved is very huge, which is just about 2 grams less than the commercial quantity. It is further submitted that the petitioner in B.A.No.4606 of 2022 is involved in 3 other NDPS cases, the details of which are as given below:

(i) Crime No.720 of 2020 of Edathala Police Station registered under Section 20(b)(ii)(A) of NDPS Act

(ii) Crime No.21 of 2019 of Aluva Excise Range Office registered under Section 20(b)II(A) of NDPS Act

(iii) Crime No.21 of 2019 of Thrippunithura Excise Range Office

registered under Sections 20(b)II(A), 21(a) & 25 of NDPS Act It is also submitted that the petitioner in B.A. No.4578 of 2022 is involved in another NDPS case, the details of which is as given below: Crime No.874 of 2018 of Kalamassery Police Station registered under Section 27(b) of NDPS Act

8. It is further submitted that it is the 2nd accused who has funded the purchase of the contraband and the bank transaction details produced BA No.4578 & 4606 of

2022 6 before the trial court will clearly substantiate the said contention. The specific allegation against the 4th accused is that it is the 4 th accused who

has purchased the contraband as requested by the 2 nd accused and handed it over to him. Therefore, the learned Public Prosecutor submitted that the petitioners are actively involved in transportation and sale of narcotic drugs and the involvement of the petitioners in other NDPS crimes earlier will clearly substantiate the said contention and further submitted that taking into consideration the antecedents of the petitioners of having involved in other NDPS cases earlier, there is every chance for getting involved in offences of a similar nature. Learned public prosecutor also submitted that though the contraband seized is not of commercial quantity, it is only less than 2 grams difference from that of the commercial quantity, the weight of the contraband being 48.270 grams of methamphetamine. It is also submitted that petitioners are actively involved in the transportation and sale of narcotic drugs, which has now become a menace to the society.

Taking all these aspects into consideration, I am of the opinion that petitioners are not entitled for bail at this stage and therefore, the bail application are accordingly dismissed. The learned counsel for the petitioners thereupon submitted that since this being an intermediate quantity they may be entitled for statutory bail, as the final report is not filed as on date. I make it clear that the dismissal of the bail application will not stand in the way of the BA No.4578 & 4606 of 2022 7 petitioners moving the jurisdictional / special court seeking bail on any of the grounds available to them. Sd/- VIJU ABRAHAM JUDGE cks

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