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Uma M. vs State of Kerala

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Court : Kerala

Decided On : Jan-24-2022

Judge : Honourable Mrs. Justice Shircy V.

Appeal No. : Bail Appl./9019/2021

Appellant : UMA M.

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHIRCY V. MONDAY, THE 24TH DAY OF JANUARY 2022 / 4TH MAGHA, 1943 BAIL APPL. NO. 9019 OF 2021 (CRIME NO.01/2021 OF THALIPARAMBA EXCISE RANGE) PETITIONER/ACCUSED NO.7 UMA M. AGED 24 YEARS D/O MANIKANDAN M, KADUCHIRA, PATTANCHERY AMSAM DESAM, CHITTOOR TALUK, PALAKKAD DISTRICT, PIN-678532. BY ADVS. K.VISWAN D.ARUN BOSE RESPONDENT/STATE/COMPLAINANT 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031. 2 THE CIRCLE INSPECTOR OF EXCISE, EXCISE RANGE OFFICE, THALIPARAMBU, KANNUR DISTRICT, PIN-670141. OTHER PRESENT: SRI.P.G.MANU-

SR.PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13.01.2022, THE COURT ON 24.01.2022 DELIVERED THE FOLLOWING: B.A.No.9019 of 2021 2

ORDER

Dated this the 24th day of January, 2022 This is the third application for bail filed by the 7 th accused in Crime No. 1 of 2021 of Thaliparamba Excise Range, Kannur registered for the offences punishable under Sections 22(c), 20(b)(ii)(B) and 29 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act').

2. The petitioner is in custody since 01.01.2021.

3. The prosecution allegation is that on 01.01.2021, the

Excise Range Inspector of Taliparamba Range, received a credible information that certain persons engaged with sale of narcotic items are residing in a hotel by name 'Sneha Bar Inn Hotel' at Bakalam, Taliparamba. Immediately he along with his party proceeded to the said hotel and conducted search in some rooms of the hotel and in Room No. 103 they could find the petitioner and the other accused with narcotic drugs. After complying with the formalities, the same was seized by the officials and thus they were booked for having committed the

B.A.No.9019 of 2021 3 aforesaid offences in contravention of the provisions of the NDPS Act.

4. The learned counsel for the petitioner submits that this

petitioner is an employee of a spa conducted in the hotel and she happened to be in the room, from where the contraband was seized by the excise officials, as she visited the inmates of Room No. 103 in connection with her business. She had absolutely no involvement in the

transaction of narcotic drugs of the accused persons conducted in the room on the relevant date. But she is undergoing unnecessary incarceration since the date of her arrest, and hence this application.

5. The learned Public Prosecutor refuted the plea raised

by the learned counsel for the petitioner and contended that the petitioner along with the other accused were found in possession of narcotic drugs and they were engaged in dealing with narcotic drugs and in fact they were found packing the same in small packets for conducting sale of the same. After complying with the formalities, the narcotic items were seized and thus the case was registered against them. Now the investigation of the case is over and charge sheet

B.A.No.9019 of 2021 4 has been submitted before the court below. The case in fact stands for trial and it was already scheduled for trial on 04.01.2022 and adjourned to 21.01.2022. It is contended that granting of bail to this petitioner at this crucial stage will definitely affect the prosecution case adversely and therefore opposed.

6. The contraband involved in this case is 1750 grams of

LSD, 53 grms of MDMA and 5.37 grms of Hasish oil. It is revealed from the records that the excise officials conducted search in the hotel on getting credible information that certain persons are dealing with narcotic items and when they conducted search, the accused were found packing the drugs in small packets to facilitate sale and then they were caught red handed and the case has been registered.

7. This petitioner had already filed an application as B.A.

No. 2556 of 2021. The said application was dismissed by this court by an order dated 28.05.2021. Thereafter, another application was filed as B.A. No. 5763 of 2021 along with the

6th accused. That application was also dismissed by an order dated 07.10.2021. This court has considered the entire facts

B.A.No.9019 of 2021 5 involved in the case and taking into account of the fact that no reasonable ground exists to show that this petitioner is innocent, dismissed the application.

8. The quantity of the contraband involved is commercial

> quantity. Of-course, Annexure IV produced by the petitioner would show that she was an employee of Annabell Spa functioning in Sneha Bar Inn Hotel from where the narcotic items were seized by the excise officials. The accused including this petitioner was found in hotel room No. 103 while they were dealing with the narcotic items. Though the learned counsel for the petitioner contended that she happened to be in the room as she is an employee of Annabell Spa, the said contention is found not acceptable as such, as there is no ground to think that she was having valid reasons to be present in the hotel room at the relevant time. At this stage, I find it difficult to accept her contention that she went to the room in connection with her employment, that is only to meet her customer, appears to be not acceptable as the entire materials available as such would reveal the complicity of this petitioner in dealing with the narcotic drugs of commercial

B.A.No.9019 of 2021 6 quantity,

limitations in granting bail under Section 37 of the NDPS Act.

9. Interpreting the word 'reasonable grounds' in

> Section 37 of the NDPS Act the Apex Court in Union of India v. Shiv Shanker Kesari [(2007) 7 SCC 798] has held as follows: 7. The expression used in Section 37(1)(b)(ii) is reasonable grounds. The expression means something more than prima facie grounds. It connotes

substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word reasonable has in law the prima facie

meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word reasonable. 9. It is often said that 'an attempt to give a specific meaning to the word reasonable is trying to count what is not number and measure what is not space.' The author of Words and Phrases has quoted from Nice & Schreiber, In re to give a plausible meaning for the said word. He says 'the expression reasonable is a relative term, and the facts of

B.A.No.9019 of 2021 7 the particular controversy must be considered before the question as to what constitutes reasonable can be determined.' It is not meant to be expedient or convenient but certainly something more than that.

10. The word reasonable signifies in accordance with

reason. In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See Municipal Corpn of Greater Mumbai v. Kamla Mills Ltd)

11. The court while considering the application for bail

with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds.

But the court has not to consider the matter as if it is pronouncing a

judgment of acquittal and recording a finding of not guilty.

[See the decision reported in State of Kerala v. Rajesh (2020(1) KHC 557)]

10. Unfortunately, I could not find any reasonable

grounds for believing that she is not guilty of the offence at this stage. Of-course she is a lady aged only 24 years. But the material on records reveal a strong case against her. The offences alleged are very serious in nature. Dealings with narcotic items will definitely lead to many serious problems in B.A.No.9019 of 2021 8

the society, as the youngsters are the main prey/victim of drug abuses. Moreover, it is to be noted that the case was already scheduled for evidence to 04.01.2022 but it was adjourned to 21.01.2022 for some reason. As it is scheduled for trial, certainly granting of bail will affect and upset the trial of the case adversely. It is true that she is in custody since 01.01.2021. But prima facie the complicity of this petitioner is revealed from the materials so far collected by the investigating agency and produced before the trial court. In short, I find that she is not entitled to be released on bail, as there is every possibility to affect the trial of the case adversely. No doubt, the trial has to proceed with smoothly. I am sure that the trial court will take earnest efforts to dispose of the case as expeditiously as possible. Dismissed. Sd/- SHIRCY V JUDGE

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