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Sivakumar vs State of Kerala

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Court : Kerala Orders

Decided On : Nov-28-2022

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : Bail Appl./8675/2022

Appellant : Sivakumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM MONDAY, THE 28TH DAY OF NOVEMBER 2022 / 7TH AGRAHAYANA, 1944 BAIL APPL. NO. 8675 OF 2022 AGAINST THE ORDER/JUDGMENTSC 1194/2022 OF ADDITIONAL DISTRICT COURT (ADHOC)-II, TRIVANDRUM Bail Appl. 3695/2022 OF HIGH COURT OF KERALA PETITIONER/ACCUSED NO.1: SIVAKUMAR AGED 35 YEARS KOTTARATHUVILA VEEDU, VAZHUTHOOR, PERUMPAZHATHUR, NEYYATTINKARA TALUK, THIRUVATHAPURAM DISTRICT., PIN - 695121 BY ADVS. V.SETHUNATH V.R.MANORANJAN (MUVATTUPUZHA) M.AYYOOBUKHAN OBEID ABDUL MAJEED

RESPONDENTS/COMPLAINANT/STATE: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 THE CIRCLE INSPECTOR EXCISE ENFORCEMENT & ANTI NARCOTICS SPECIAL SQUAD, THIRUVANATHAPURAM., PIN - 695001 BY SMT. SEETHA S. (PP) THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Bail Appln. No. 8675 of 2022 2

VIJU ABRAHAM , J.

========== Bail Appln. No. 8675 of 2022 ========== Dated this the 28th day of November, 2022

ORDER

This is an application for regular bail.

2. Petitioner is 1st accused in Crime No. 12/2021 of Excise

Enforcement & Anti Narcotics Special Squad, Thiruvananthapuram district, alleging commission of offences punishable under Sections 8(c), 20(b)(II(C) and 25 read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. The prosecution case is that, on 01.12.2021 at 3.PM,

the Detecting Officer got an information over the phone from reliable sources that in the premises of NIMS Hospital car parking, persons who are travelling in red scorpio car having Regn. No. KL 16 A 4595 will be coming to purchase Ganja, and thereupon the Excise Party was watching the area and red scorpio car having Regn. No. KL 16 A 4595 was parked with engine in starting mode and at 5 PM the 1st accused/petitioner came in a Bullet Motor Cycle and handed over a Big Shopper cover to the persons in scorpio car and in turn the petitioner/1st accused was handed over packet containing cash. When the

Bail Appln. No. 8675 of 2022 3 Excise party tried to intercept the scorpio car, it escaped from the scene. The petitioner/1st accused was arrested with a cash of Rs. 25,000/- in his pocket and taken into custody. 22.5 Kg of ganja was seized from the house of the 2 nd accused and another ganja was seized from the red scorpio car having Regn. No. KL 16 A 4595 after 6 hours. The petitioner was arrested on 01.12.2021 produced before the learned Magistrate on the next day and remanded to judicial custody.

4. The petitioner submitted that he has been falsely

implicated in the above said crime and that the final report is already filed and the case is now pending as S.C.No. 1194/2022 and therefore the further detention of the petitioner in custody is not required for the purpose of the investigation. As against the criminal antecedents, petitioner would submit that all the offences alleged in Crime No. 104/2015 of Neyyattinkara Police Station are bailable and Crime No. 928/2016 of Kanniramkulam Police Station is regarding a traffic offence. Therefore, it was submitted that the petitioner is not involved in any NDPS cases. Petitioner has a further case that no contraband was seized from the custody of the petitioner. Petitioners daughter was under treatment in NIMS Hospital and Rs. 25,000/- allegedly seized by the investigaiting agency is the one carried to the hospital for the treatment of his child. The contraband was

Bail Appln. No. 8675 of 2022 4 seized from the house of the 2nd accused and the scorpio car after the arrest of the petitioner and the petitioner has no connection with the scorpio car or the house of accused No.2. There is a procedure violation entitling the petitioner for grant of bail. The petitioner has a specific case that a perusal of Annexure A2 final report will reveal that the secret information was given by the petitioner himself and therefore the said

aspect should be considered while considering the bail application.

5. Learned Public Prosecutor seriously opposed the

application for bail mainly contending that on getting information that ganja is being sold in the parking ground of NIMS Hospital, Neyyattinkara, Excise party

reached there and found that the petitioner came in a bullet and handed over a cover to 4th accused and he thereafter handed over a bundle of currency notes to 1st accused and when Excise party attempted to apprehend them, the scorpio car moved forward in a rash manner, and they escaped from the scene. But the 1 st accused was apprehended and on his information, it is revealed that ganja is kept in the house of the 2 nd accused and thereafter in a sack, ganja was found kept in 18 packets, and it was revealed

that one of the relatives of the 2 nd accused, Shri. Shanthibooshan, who is the 3rd accused had brought this

Bail Appln. No. 8675 of 2022 5 contraband from Andhra pradesh, and they also received a portion of the sale receipt. The ganja kept in 18 packets was weighed, and it was found to be 22.5 kgs, and when the scorpio jeep was searched 2.5 kgs of ganja was also seized. Body search was also conducted in the presence of a Gazetted Officer. It is contended by the learned Public Prosecutor that the petitioner have an active role in the commission of the offence. Verification of the CDR details revealed the role of the accused in the alleged offence. The 1 st accused is the employee and helper of Shanthibhooshan who is the 3rd accused, and the bullet bike used for sale of the contraband was given to the 1 st accused by the said Shanthibooshan. It is found that the 4 th accused is involved in another NDPS case, Crime No. 392/2022 of Valavupacha Police Station whereas the petitioner is involved in two crimes, Crime No. 104/2015 of Neyyatinkara Police Station and Crime No. 928/2016 of Kanjiramkulam Police Station, whereas the 2nd accused is involved in Crime No. 355/ 2003 and 2883/2020 of Neyyatinkara Police Station and also in Crime No. 154/2020 of Parassala Police Station.

6. As regards the contention of the petitioner that it is on

his secret information that the contraband was seized, the learned Public Prosecutor contended that, on getting a secret information, the petitioner was apprehended along with Rs.

Bail Appln. No. 8675 of 2022 6 25,000/- and later on the contraband of 2.5 kgs which was handed over by the petitioner was recovered from a scorpio jeep.

Thereafter, on statement given by the petitioner herein, further recoveries were effected from the house of the 2 nd accused. It is the said statement which lead to the recovery of 22.5 kgs of ganja after the arrest of the petitioner, which find a place in Annexure A2 final report.

7. All the contentions raised by the petitioner was dealt

with in detail while considering Annexure A1 order whereby the application submitted by the petitioner was rejected. The fresh contention that is taken in the present bail application is that, it is the petitioner who has given the secret information which lead to the recovery of the alleged contraband, which in turn was answered by the learned Public Prosecutor that, it is on the basis of the statement given by the petitioner after he was apprehended along with Rs. 25,000/- that further recovery of 22.5 kgs of ganja from the house of the 2 nd accused was made.

8. The contraband involved is of a commercial quantity,

therefore the rigour of Section 37 of the Act will defenitely come into play. No additional grounds has been raised by the petitioner to substantiate that the rigour of Section 37 of the NDPS will not apply in the facts and circumstances of this case. Therefore I find no reason to take a different view that was

Bail Appln. No. 8675 of 2022 7 taken in Annexure A1 order. It is seen that final report is filed and the petitioner is in detention from 01.12.2021 onwards. Therefore there will be a direction to the trial court to expedite trial of the case and complete the same at the earliest. It is made clear that if the trial of the case is unduly delayed, the petitioner is free to approach this Court or the jurisdictional Court seeking bail. With the above said direction the bail application is dismissed.

Sd/- VIJU ABRAHAM JUDGE sbk/-

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