

Fijo vs State of Kerala

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Court : Kerala Orders

Decided On : Oct-27-2021

Judge : Honourable Mrs. Justice Shircy V.

Appeal No. : Bail Appl./7561/2021

Appellant : FIJO

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHIRCY V.
WEDNESDAY, THE 27TH DAY OF OCTOBER 2021 / 5TH KARTHIKA,
1943 BAIL APPL. NO. 7561 OF 2021 CRIME NO. 705 OF 2021 OF
KORATTY POLICE STATION PETITIONER/3RD ACCUSED: FIJO
AGED 35 YEARS PULLAN HOUSE, KORATTY SOCIETY NAGAR
DESOM, MURINGOOR, THEKKUMMURI VILLAGE, CHALAKUDY
THALUK, THRISSUR DISTRICT PIN : 680 309, PIN - 680309 BY ADVS.
PRABHU K.N. MANUMON A. JAYAN KUTTICHAKKU
RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED
BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA ERNAKULAM,
PIN - 682031 BY ADV PUBLIC PROSECUTOR OTHER PRESENT:

NOUSHAD.K.A-- SR.PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21.10.2021, THE COURT ON 27.10.2021 PASSED THE FOLLOWING:

ORDER

Dated this the 27th day of October, 2021 The petitioner, who is arraigned as the 3rd accused in Crime No. 705 of 2021 registered for the offences punishable under Sections 20(b)(ii) C, 25, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act') read with Section 120B of the Indian Penal Code, has moved this application seeking bail under Section 439 of the Code of Criminal Procedure.

2. The petitioner has been in custody since 13.08.2021.

The prosecution case is that on 12.08.2021 at about 10.45 a.m., accused Nos. 1 and 2 were found transporting 20.845 kgs. of ganja in a Mahindra Bolero pickup bearing Registration No. KL-39-G-4860 through the public road near Muringoor Chackola Marys Tile Work. They were apprehended by the 1st respondent and on investigation it was revealed that accused Nos. 3 and 4 had financed them to procure and transport the ganja and thereby accused Nos. 1 and 2 were apprehended by the police and accused Nos. 3 and 4 were arrested on the next day.

3. The learned counsel for the petitioner has raised a plea

of false implication and contended that he is totally innocent of the allegations levelled against him. In fact nothing has been seized from his possession. Of-course there is an allegation that he had financed to purchase and transport ganja along with the 4th accused, as confessed by accused Nos. 1 and 2, but, in fact, this petitioner is having some business transaction with accused No.2. The amount of Rs.5,000/- alleged to have been transferred by this petitioner to the account of the 2

nd accused was not for purchase of the alleged ganja as alleged by the prosecution, but it was in connection with their diary farm. So, he seeks for his release on bail.

4. On the other hand, the learned Public Prosecutor

vehemently opposed the application and contended that the allegations raised against this petitioner is absolutely correct and reliable and actually the detection of the contraband was on the basis of a reliable secret information received by the Sub Inspector of Koratty Police Station and on the basis of the information, after complying with the formalities he had intercepted the vehicle and seized the ganja from the possession of accused Nos. 1 and 2. On recording the statement, the involvement of this petitioner as well accused No.4 were revealed and thus they were apprehended on the next day.

5. Moreover, it is pointed out that this petitioner is having

very bad criminal antecedents and if he is released on bail, there is every possibility to repeat similar offences as well to interfere with the investigation of the case and that will affect the smooth flow of investigation.

6. It is true that no contraband was seized from the

possession of this petitioner. But on the basis of the statement given by accused Nos. 1 and 2, this petitioner was also apprehended. It is to be noted that the prosecution case is that this petitioner along with the 4th accused had financed to purchase the ganja by accused Nos. 1 and 2. The prosecution has collected materials to show that there was a transfer of a sum of Rs.5,000/- by this petitioner to the account of 2 nd accused. But this petitioner has produced copy of an agreement dated 08.10.2020 to substantiate his contention that he was actually having business transaction with the 2 nd accused and the transfer of the amount of Rs.5,000/- was only for that purpose. But it is pertinent to note that this

agreement is dated 08.10.2020. The stamp paper purchased by this petitioner from the stamp vendor, as revealed from the document itself, was on 20.10.2020. So also, the stamp vendor had purchased the stamp paper from the Sub Treasury, Chalakudy on 15.10.2020. Both the seals affixed in the document would reveal that the purchase of the stamp paper was after the alleged date of

execution of the agreement, i.e. on 08.10.2020. These facts

alone are sufficient to infer that the agreement is a forged document created by this petitioner so as to appear that the transfer of money in the account of the 2 nd petitioner was in connection with the alleged business between himself, the 2 nd accused and one Aneesh George. So, prima facie, materials are sufficient to infer the prosecution case that the petitioner had funded to purchase ganja from outside source so as to conduct illegal sale in Kerala. So, this document will not in any way help the petitioner to substantiate his case and it is not possible at this stage to go deep into all the intricacies, to find that there is absolutely no case against this petitioner.

7. The quantity of the ganja seized from accused Nos. 1

and 2 is commercial quantity. The other records prima facie reveal that the detecting officer has complied with the legal formalities under Sections 42 and 50 of the NDPS Act to conduct search and seizure of the contraband from the possession of accused Nos. 1 and 2, while they were engaged in transportation of the same in a vehicle.

8. Moreover, the investigating agency has to gather

evidence as it was revealed from the materials so far collected that this petitioner had also joined accused Nos. 1 and 2 in Andhra Pradesh by taking up a journey by flight, while accused Nos. 1 and 2 proceeded to

the spot with the vehicle involved in this case to procure the contraband. So, the investigating agency has to collect his travel details also for the purpose of the investigation of the case.

9. Here commercial quantity of contraband is involved in

this case. Granting of bail in a case where commercial quantity of narcotic drugs is involved is circumscribed by the provisions of Section 37 of the NDPS Act. In *State of Kerala v. Rajesh* (2020(1) KHC 557) the Apex Court has held as follows:

20. The scheme of S. 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under S. 439 of the Cr.PC, but is also subject to the limitation placed by S.37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban of granting bail operates.

21. The expression reasonable grounds means

something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief

contemplated in the provision requires existence of such facts

and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of S.37 that in addition to the limitations provided under the Cr.PC,

or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

10. In CrI. Appeal No. 1043 of 2021 (Union of India (UOI)

through Narcotic Control Bureau, Lucknow v. Md. Nawas Khan), also the Apex Court has recently held as follows: 20. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the Accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in

order to curb the menace of drug-trafficking in the country,

stringent parameters for the grant of bail under the NDPS Act have been prescribed.

11. Moreover, it is to be noted that this petitioner is a

history sheeter as he is involved in 20 criminal cases registered before various police stations, such as Angamaly, Kalady, Nedumbassery, Koratty, Chalakudy, Vengara and Kondotty. So, the apprehension expressed by the learned Public Prosecutor that granting of bail will definitely affect the investigation of the case appears to be quite genuine. As he is having a very bad criminal history, if he is released on bail, an effective and smooth investigation of the case will not be possible for the investigating agency.

12. Having regard to the entire facts involved in this case, I

find that this petitioner is not entitled to be released on bail as requested by him and I also find that there are no reasonable grounds to believe that he is not guilty of the offences alleged against him. Dismissed. Sd/- SHIRCY V. JUDGE sb

