

Muhammad vs State of Kerala

Muhammad vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1697227

Court : Kerala Orders

Decided On : Nov-29-2021

Judge : Honourable Mrs. Justice Shircy V.

Appeal No. : Bail Appl./8564/2021

Appellant : Muhammad

Respondent : State of Kerala

Judgement :

BAIL APPL. NO. 8564 OF 2021 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHIRCY V. MONDAY,
THE 29TH DAY OF NOVEMBER 2021 / 8TH AGRAHAYANA, 1943 BAIL
APPL. NO. 8564 OF 2021 (CRIME NO.1295 OF 2021 OF PETTA
POLICE STATION, THIRUVANANTHAPURAM)
PETITIONER/ACCUSED MUHAMMAD AGED 61 YEARS SON OF
MOIDHEEN, HOUSE NO. 399, MARAPPALAM DESOM,
MADHUKKARA VILLAGE, MADHUKKARA TALUK, COIMBATORE
DISTRICT, TAMIL NADU, PIN - 641105 BY ADV M.J.POLLY
RESPONDENT STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA ERNAKULAM, PIN -

682031 OTHER PRESENT: SMT. SREEJA.V- SR.PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: BAIL APPL. NO. 8564 OF 2021 2

ORDER

Application for regular bail.

2. The petitioner is the accused in Crime No.1295 of 2021 of

Petta police station registered for the offences punishable under Sections 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act')

3. The prosecution allegation is that on 27.6.2021 at about

6.45 a.m the petitioner was found in possession of 92.885 kg of ganja kept near the road side in a bushy area in contravention of the provisions of the Abkari Act and thereby committed the aforesaid offences.

4. The learned counsel for the petitioner has submitted that he

is totally innocent of the allegations levelled against him. He is a native of Tamil Nadu and he has absolutely no connection with the contraband seized by the investigating officer.

5. Now the learned Public Prosecutor has submitted that he

was found in possession of this contraband by the detecting officer and after complying with all the formalities, the seizure was effected and he was arrested from the spot with that much quantity of contraband.

6. It is true that the petitioner is aged 61 years and is

BAIL APPL. NO. 8564 OF 2021 3 undergoing incarceration since 27.06.2021. But now the investigation of the case is over and charge sheet has been submitted

before the jurisdictional court on 27.9.2021. The quantity of the contraband involved is commercial quantity. The allegations levelled against him are very grave and serious in nature. No doubt the gravity and seriousness of offences has to be considered while releasing him on bail. Moreover the rigour under Section 37 of the Act is also attracted while considering the application for bail, as the quantity of the contraband seized is coming under commercial quantity. In *State of Kerala v. Rajesh* (2020(1) KHC 557) the Supreme Court in paragraph 20 and 21 it was 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.

BAIL APPL. NO. 8564 OF 2021 4

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.

The learned counsel for the petitioner could not point out any circumstances to conclude that reasonable grounds are available on record to believe that he is not guilty of the charges. Therefore, considering the nature of the accusation levelled against the petitioner, the other facts and circumstances and more importantly the fact that the contraband involved is commercial quantity, I find absolutely no reasonable ground to conclude that he is entitled to be released on bail. Dismissed. Sd/- SHIRCY V smm JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com