

Mujeeb Vs. State of Kerala Rep by the Public Prosecutor

Mujeeb Vs. State of Kerala Rep by the Public Prosecutor

SooperKanoon Citation : sooperkanoon.com/947373

Court : Kerala

Decided On : Sep-05-2011

Reported in : 2011(3)KLJ763; 2011(4)KLT31; 2011(3)KHC748;
2012CrLJ95(NOC)

Judge : K.T. Sankaran

Appeal No. : Bail Appl.No.6491 of 2011

Appellant : Mujeeb

Respondent : State of Kerala Rep by the Public Prosecutor

Judgement :

1. This is an application for bail under Section 439 of the Code of Criminal Procedure. The petitioner is accused No.3 in Crime No.212 of 2011 of Perumpadappu Police Station, Malappuram District.

2. The offences alleged against the petitioner are under Sections 21 (c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'). The case was originally registered under Section 22(c) of the NDPS Act and Section 120B read with Section 34 of the Indian Penal Code. Later, a report was filed and the sections of offence were altered to Sections 21 (c) and 29 of the NDPS Act.

3. The prosecution case is the following: On 28.6.2011 at about 4 PM, the Sub Inspector of Police, Perumpadappu Police Station got secret information that some persons belonging to Mannarkkad would arrive near Taj Theatre, Palappetty, to hand over brown sugar to one Tharayil Mujeeb of Palappetty. The police party went to the spot. They found four persons near the Taj Theatre. On seeing the police party, one among the four persons escaped from the place in an Alto car, bearing registration No. KL5-7075. The other three persons were apprehended. They were: (1) Subair, (2) Sheriff (brother of Subair) and (3) Mujeeb. The police got information that the person who escaped from the scene of occurrence was Harris. He was made accused No. 4. On search of the body of accused Nos. 1 to 3, a quantity of 900 grams of brown sugar was seized from the possession of accused No. 1 and three small packets containing brown sugar were seized from the possession of accused No. 2. There was no contraband in the possession of Mujeeb, accused No. 3.

4. According to the prosecution, the brown sugar has a market value of Rupees Fifty lakhs. On the packets containing brown sugar, it was printed that the same was "Afgan product". According to the prosecution, accused No. 1 belongs to an extremist organization called NDF and that the brown sugar was imported into India for facilitating terrorist activities in the coastal area of the State of Kerala. It is also submitted that Special Branch and intelligence Bureau also are looking into the matter as to whether the accused persons have any connection with terrorist groups working abroad. Accused No. 4 Harris is yet to be arrested.

5. The petitioner moved for bail before the Special Judge (NDPS Act cases), Vadakara. That Bail Application was dismissed by the order dated 27.7.2011.

6. Sri.Nirmal.S., the learned counsel appearing for the petitioner submitted that no narcotic drug or psychotropic substance was seized from the possession of the petitioner and therefore, there is no justification for the continued detention of the petitioner. It is submitted that the rigor of Section 37(1)(b)(ii) of the NDPS Act would not apply, so long as no contraband was seized from the possession of the petitioner.

7. Sri.V.Tekchand, the learned Public Prosecutor, vehemently opposed the Bail Application. He submitted that the fact that brown sugar was not found in the possession of one among the accused is not relevant at all, particularly when Section 29 of the NDPS Act applies. Learned Public Prosecutor also submitted that the parameters of Section 37(1)(b)(ii) of the NDPS Act are not satisfied in the case and therefore, the petitioner is not entitled to the grant of bail.

8. As stated earlier, originally the offence alleged was under Section 120B read with Section 34 of the Indian Penal Code and Section 22 of the NDPS Act. It would appear that the investigating officer was under the misapprehension that brown sugar is a psychotropic substance. Later, the Section of offence was corrected. So also Section 120B of the Indian Penal Code need not be invoked, since Section 29 of the NDPS Act covers the criminal conspiracy to commit an offence punishable under Chapter IV of the NDPS Act. Even after altering the Section of offence, prima facie, it would appear that all the relevant Sections have not been included. On the basis of the allegation, it would, prima facie, that Sections 23 and 27A of the NDPS Act would also apply to the case on hand.

9. The NDPS Act was enacted to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and psychotropic Substances and for matters connected therewith. In the Statement of Objects and Reasons to the NDPS Act, it is mentioned that the statutory control over narcotic drugs through the Central and State enactments were found deficient with the passages of time and the developments in the field of illicit drug traffic and drug abuse at national and international level, which necessitated enactment of a comprehensive legislation on narcotic drugs and psychotropic substances. The object and purpose of the NDPS Act would not be fully achieved if appropriate offences are not alleged against the accused and included in the charge. The seriousness of the offence should not be diluted by not incorporating the appropriate Sections of offence in the charge. Sensitising the police and other investigating agencies in this regard is

required to avoid the situation of the accused being not tried for the appropriate offence.

10. Section 2(viia) defines “illicit traffic” as follows:

“(viia) “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means-

(i) cultivating any coca plant or gathering any portion of coca plant

(ii) cultivating the opium poppy or any cannabis plant

(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances.

(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clauses (i) to (iii); or

(v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv).

Other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorization issued, thereunder, and includes-

(1) financing directly or indirectly, any of the aforementioned activities;

(2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and

(3) harbouring persons engaged in any of the aforementioned activities;”

11. The expressions “to import inter-State”, “to import into India”, “to export from India” and “to export inter-State” are defined in Section 2(xxiv) to (xxvii) of the NDPS Act, as follows:

“(xxiv) “to import inter-State” means to bring into a State or Union territory in India from another State or Union territory in India;

(xxv) “to import into India”, with its grammatical variations and cognate expressions, means to bring into India from a place outside India and includes the bringing into any port or airport or place in India of a narcotic drug or a psychotropic substance intended to be taken out of India without being removed from the vessel, aircraft, vehicle or any other conveyance in which it is being carried.

Explanation:-- For the purposes of this clause and clause (xxvi), “India” includes the territorial waters of india;

(xxvi) “to export from India”, with its grammatical variations and cognate expressions, means to take out of India to a place outside India;

(xxvii) “to export inter-State” means to take out of a State or Union territory in India to another State or Union territory in India;”

12. Section 21 of the NDPS Act provides that whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable in the, manner provided in clauses (a) to (c) therein. Manufacture, possession, sale, purchase, transportation, importing inter-State, exporting inter-State and use of any manufactured drug or any preparation containing any manufactured drug constitutes the offence under Section 21. To attract Section 21, it is not always necessary that a person should be found to be in possession of the drug. If any one of the ingredients mentioned in Section 21 is satisfied, the offence would be complete. In the present case, the allegation is that the petitioner came to the place of incident to purchase the drug. The sellers of the drug also were present there. It is also alleged that a conspiracy took place among the accused at a saw mill at Valancheri for sale and purchase of the brown sugar and sample packets were handed over to the purchaser. The investigation also revealed that the accused met at the place of occurrence on

28.6.2011 as per the programme scheduled. Prima facie, these allegations would attract the expressions “sells” and “purchases” occurring in Section 21 of the Act. Therefore, I reject the contention of the learned counsel for the petitioner that the petitioner cannot be said to have committed the offence under Section 21 of the Act, since no drug was seized from his possession.

13. It is well settled that both the conditions under sub-clause (ii) of clause (b) sub-section (1) of Section 37 of the NDPS Act must be satisfied to enable the Court to grant bail to an accused in a case involving commercial quantity where the Public Prosecutor opposes the application for grant of bail. In the present case, there are no reasonable grounds for believing that the petitioner is not guilty of the offences alleged. I am also not satisfied that the petitioner is not likely to commit any offence while on bail. Therefore, the petitioner is not entitled to the grant of bail and the Bail Application is liable to be dismissed.

14. There is mention in the case diary about the necessity to find out the source of the drug. It is also seen that the investigating agency apprehends that the drug was imported into India for the purpose of securing the resources for terrorist activities. It is also mentioned that the matter is being looked into by the Special Branch and Intelligence Bureau to find out whether the accused has any overseas connection. However, the case diary does not reveal any positive and effective steps having been taken for collecting the necessary data in this regard. In a case of this nature, hectic steps must be taken not only to bring home the guilt of the accused but to snap the chain of activities in drug trafficking. Drug trafficking has close nexus with terrorist activities. It is common knowledge that terrorist activities require finance. Where does the money come from for these activities? It is also of concern if the money derived from drug trafficking is being used as a source of finance for terrorist activities. Drug trafficking, counterfeiting of Indian currency and terrorist activities constitute a chain. If the source of drug trafficking is effectively disrupted, it would be a great service to the nation. Apart from the evil effect of drug abuse by the citizens of this country, drug trafficking also would tend to adversely affect the unity and integrity and the financial stability of the nation since drug trafficking reportedly has close nexus with terrorist activities. Concerted efforts should be made by all concerned to check drug trafficking and drug abuse

in order to ensure the health and well being of the citizens and to protect the interests of the nation.

For the aforesaid reasons, the Bail Application is dismissed.

It is made clear that the findings and observations shall not constitute findings for the purpose of final disposal of the case.

A copy of this order shall be sent by the Registry to the Chief Secretary to the Government of Kerala for appropriate follow up action.

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