
(2023) 06 KL CK 0161
In the High Court Of Kerala
Case No : Bail Application No. 3513 Of 2023

Abdurahiman

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 13-06-2023

Acts Referred:

Narcotic Drug and Psychotropic Substances Act, 1985 — Section 8(c), 20(b)(ii)C, 22(c), 29, 37

Citation : (2023) 06 KL CK 0161

Hon'ble Judges : Viju Abraham , J

Bench : Single Bench

Advocate : C.Y.Vinod Kumar, C.Anilkumar, P.M.Manash, Aadil Nazarudeen, Sunilkumar Kuriakose

Final Decision : Dismissed

Judgement

Viju Abraham, J

1. This is an application for regular bail.
2. The petitioner is the 2nd accused in Crime No.17 of 2022 of Malappuram Excise Range alleging the commission of offences punishable under Sections 8(c), 20(b)(ii)C, 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, "NDPS Act").
3. The prosecution case, in brief, is that while Excise Inspector, Malappuram Excise Range Office and party were conducting vehicle inspection on the basis of secret information on 31.07.2022 at 2.20 a.m. near Morayur VHM Higher Secondary School, the 1st accused was found to have transported 5.5 kgs of ganja on scooter bearing registration No.KL 10 AY 2817 and on the basis of the information given by the 1st accused, 69.169 kgs of ganja and 52 grams of MDMA were seized from the house of accused Nos. 2 and 3 and from the car bearing registration No.KL 84 A 4775 parked in the car porch of the house. Accused Nos. 2 and 3 are parents of the 4th accused.

4. The petitioner was arrested on 31.07.2022 and he in custody since then. It is also submitted that he and his wife have been falsely implicated in the above said crime due to a grave misunderstanding. It is also submitted that the petitioner and the 3rd accused are husband and wife and that the 3rd accused has approached this Court by filing B. A. No.2144/2023 and was granted bail as per Annexure A2 order dated 20.04.2023. It is also submitted that the petitioner has been falsely implicated only for the reason that he happened to be there in the house at the time of the alleged seizure of the contraband. It is also submitted that even as per the final report and the statement of the 1st accused, the alleged contraband was brought by him and one Safar, who is the son of the petitioner and accused No.3, and kept in the house. It is further submitted that he has no other criminal antecedents and that the investigation is over and charge sheet is already laid and therefore, continued detention of the petitioner is not required for the purpose of investigation.

5. The learned Public Prosecutor submitted that on getting prior information, the vehicles were being checked and 5.5 kgs of ganja which was transported in Hero Maestro scooter was seized and the 1st accused was arrested. On the basis of the information given by the 1st accused the house, where accused Nos. 2 and 3 were residing was searched and from the car bearing registration No.KL 84 A 4775 parked in the porch of the said house 69.169 kgs of ganja, 52 grams of MDMA and two mobile phones were seized and accused 2 and 3 were also arrested. The specific case of the learned Public Prosecutor is that the seizure was from a scooter while 5.5 kgs of ganja was being transported and the 1st accused was arrested at the spot. It is also submitted by the learned Public Prosecutor that large quantity of contraband was seized from the house, but submitted that the petitioner has no other criminal antecedents.

6. I have considered the bail application of the 3rd accused who was also arrayed as an accused in similar circumstances. The petitioner and the 3rd accused are husband and wife and that the petitioner has no other criminal antecedents. Considering the facts and circumstances of the case and the nature of allegations and the period of detention undergone, I am of the opinion that the rigor of Section 37 of the NDPS Act will not apply to the facts and circumstances of this case. Taking all these circumstances into consideration, I am inclined to grant bail to the petitioner on the following stringent conditions:

(i)The petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like-sum to the satisfaction of the Jurisdictional Court;

(ii) Petitioner shall appear before the trial court on all posting without fail, except specifically exempted by the trial court;

(iii) The petitioner shall not attempt to influence or intimidate any witness in Crime No.17 of 2022 of Malappuram Excise Range;

(iv)The petitioner shall not involve in any other crime while on bail.

If any of the aforesaid conditions are violated, the Investigating Officer in Crime No.17 of 2022 of Malappuram Excise Range may file an application before the jurisdictional Court, for cancellation of bail.