
(2021) 05 KL CK 0036
In the High Court Of Kerala
Case No : Bail Application No. 3317 Of 2021

Akbar Ali And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 04-05-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20(b)(ii)(B), 29

Citation : (2021) 05 KL CK 0036

Hon'ble Judges : P.V. Kunhikrishnan, J

Bench : Single Bench

Advocate : T.K. Sandeep, C.N. Prabhakaran

Final Decision : Allowed

Judgement

1. This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioners are the accused in Crime No.148 of 2021 of Perinthalmanna Police Station. The above case is registered against the petitioners alleging

offences punishable under Sections 20(b)(ii)(B) and 29 of the Narcotic Drugs and Psychotropic Substances Act.

3. The prosecution case is that the petitioners were found in possession of 10.400 Kgs of ganja for the purpose of sale at Ponniyamkurrussi. Hence, it is alleged that the accused committed the offence.

4. Heard the learned counsel for the petitioners and the learned Public Prosecutor. The learned counsel for the petitioners submitted that the

petitioners are in custody from 17.03.2021 onwards. The contraband allegedly seized from the petitioners is only an intermediate quantity as per the

Narcotic Drugs and Psychotropic Substances Act. The learned counsel also

submitted that the petitioners are ready to abide by any conditions if this Court grant them bail. The learned Public Prosecutor seriously opposed the bail application.

5. It is true that the allegations against the petitioners are very serious. The petitioners are in custody from 17.03.2021 onwards. The contraband seized from the petitioners is only an intermediate quantity as per the Narcotic Drugs and Psychotropic Substances Act. The total quantity allegedly seized is 10.400 Kgs and there are three accused in this case. Considering the facts and circumstances of the case, I think this bail application can be allowed on stringent conditions.

6. Moreover, the 2nd wave of COVID-19 is spreading in the country and the citizens are facing serious difficulties. In the state of Kerala, the 2nd wave of the pandemic is creating lot of problems and even the day-to-day life of the citizens are affected. Everyday, about 25,000 people are tested positive with COVID-19. In such circumstances, this Court has to consider this fact also while considering bail applications. The life is more important than anything. Therefore, I am considering this bail application based on the above pandemic situation.

7. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the Hon'ble Supreme Court in Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition(C) No.1 of 2020) and a Full Bench of this Court in W.P(C)No.9400 of 2020 issued various salutary directions for minimizing the number of inmates inside prisons. These happened during the 1st wave of COVID-19 season.

8. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in Chidambaram. P v Directorate of Enforcement (2019 (16) SCALE 870), after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

9. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. Petitioners shall be released on bail on executing a bond for Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.
2. Petitioners shall appear before the Investigating Officer for interrogation as and when required. The petitioners shall co-operate with the investigation and they shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.
3. Petitioners shall not leave India without permission of the jurisdictional Court.
4. Petitioners shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which they are suspected.
5. Petitioners shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing in the wake of Covid 19 pandemic.
6. If any of the above conditions are violated by the petitioners, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court.