
(2023) 05 KL CK 0066
In the High Court Of Kerala
Case No : Bail Application No. 2984 Of 2023

Albin Reji

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 12-05-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20(b)(ii)A, 22(b), 29

Citation : (2023) 05 KL CK 0066

Hon'ble Judges : P.G. Ajithkumar, J

Bench : Single Bench

Advocate : Nireesh Mathew, T. V. Neema

Final Decision : Dismissed

Judgement

P.G. Ajithkumar, J

1. This is an application for bail filed under Section 439 of the Code of Criminal Procedure, 1973.
2. The petitioners are the accused in Crime No.989 of 2023 of Central Police Station, Ernakulam. They allegedly had committed the offences punishable under Sections 20(b)(ii)A, 22(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).
3. The prosecution allegation is that about 7.30 p.m on 29.03.2023, the petitioners were found in possession of 381 grams of Ganja and 4 gms of MDMA near St.Joseph U.P.School at Vivekandanda Road in Ernakulam Village.
4. Heard the learned counsel for the petitioner and the learned Public Prosecutor.
5. The petitioners would contend that they did not involve in the alleged crime and without any material or evidence, they have been implicated in the crime. They are innocent. The investigation in the matter has been progressed considerably and there is no reason or justification for their further detention.

6. The learned Public Prosecutor would submit that considering the seriousness of the offence and the possibility of interfering with the investigation by the petitioners in the event of their release on bail, this petition deserves only to be dismissed.

7. No doubt, the offences alleged against the petitioners are serious in nature. It is seen that investigation in the matter has been progressed considerably. The petitioners are aged 21 and 20 years respectively. They have been in custody ever since their arrest on 30.03.2023. Considering the aforesaid aspects and also the nature of the offence, I am of the view that further detention of the petitioners pending investigation is unnecessary. Therefore the petitioners are entitled to be released on bail.

8. It is not seen that the petitioner have filed an application for bail before the Sessions Court. It is true that in order to file an application for bail before this Court invoking the provisions of Section 439 of the Code, it is not a precondition to file an application before the Sessions Judge. But when, in cases like this, the application for bail is filed before this Court bypassing the jurisdiction of the Sessions Court, it amounts to choosing of Forum. This Court strongly deprecates that approach of the petitioners.

8. The bail application is allowed and the petitioners are granted bail on his executing a bond for Rs.50,000/-(Rupees fifty thousand only), with two solvent sureties for the like amount each, to the satisfaction of the learned Sessions Court, subject to the following conditions:

(i) The petitioners shall not influence or intimidate witnesses or tamper with evidence;

(ii) petitioners shall appear before the investigating officer as and when called for until filing the final report;

(iii) During the period of bail, petitioners shall not get involved in any other offence.

(iv) The petitioners shall surrender their passports before the learned Magistrate, and if they do not have a passports, they shall file affidavits stating that fact.

(v) The petitioners shall not enter the territorial limits of jurisdictional court, except to comply with the aforesaid directions, till filing of the final report.

In case of breach of the bail conditions, the prosecution shall be at liberty to apply for cancellation of the bail before the jurisdictional court.