(2024) 06 KL CK 0172

In the High Court Of Kerala

Case No : Bail Application No. 4434 Of 2024

Naseeb Hassan APPELLANT

Vs

Union Territory Of Lakshadweep Rep. By Its Administrator RESPONDENT

Date of Decision : 07-06-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20(b)(ii)(b), 23, 27(a), 29

Citation : (2024) 06 KL CK 0172

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : Lal K.Joseph, P.Muraleedharan, T.A.Luxy, Suresh Sukumar, Koya Arafa Mirage, Anzil Salim, Sanjay Sellen, Sajith Kumar V., Sajith Kumar V., Seetha S

Final Decision : Allowed

Judgement

C.S.Dias, J

1. The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the second accused in Crime No.10/2024 of the Kavarathi Police Station, Lakshadweep registered against the accused (two in number) for allegedly committing the offences punishable under Sections 20(b)(ii)(b), 23, 27(a) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'the Act'). The petitioner was arrested on 31.03.2024 and remanded to judicial custody.

2. The essence of the prosecution case is that: on 31.03.2024, while the Flying Squad and Statistics Surveillance Team of the respondent was conducting baggage checking of the passengers of the M.V.Kavarathi Ship, which was sailing from Cochin to Kavarathi, they found 250 ml of hashish oil in the baggage of the first accused. They seized the contraband and arrested the first accused at the scene of occurrence. During the interrogation of the first accused, he confessed

that there was 2.5 ml hashish oil in his house also. Accordingly, the said contraband was also seized. It was revealed that the second accused, who was the canteen staff of the ship, was also involved in the case. In a search conducted in the ship, 5 ml. of hashish oil was seized from the shoulder bag of the second accused. It was also unveiled that another person named Mujeeb Rahman, is also involved in the crime, who is now arrayed as the accused No.3. Thus, the accused have committed the above offences.

3. Heard; Sri. Lal K.Joseph, the learned counsel appearing for the petitioner and Sri.C. Sajithkumar, the learned Standing Counsel/Prosecutor appearing for the respondent.

4. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations leveled against him. He has been falsely implicated in the crime. There is no incriminating material to show the petitioner's involvement in the crime. In any given case, the petitioner has been in judicial custody for the last 70 days, the investigation in the case is practically complete and recovery has been effected. Moreover, the contraband involved in the case is of an intermediate quantity and the petitioner does not have any criminal antecedents. Hence, the application may be allowed.

5. The learned Standing Counsel opposed the application. He has filed a statement, inter alia, contending that during the course of the investigation, it has been revealed that there were banking transactions between the accused 1 and 2. Therefore, the Investigating Officer has incorporated Sections 27A and 29 by filing a special report before the jurisdictional court. If the petitioner is released on bail, there is every likelihood of him committing similar offences. Hence, the application may be dismissed.

6. On an evaluation of the materials on record, it can be gathered that the prosecution allegation against the first accused is that he was found in conscious possession of 250 ml. of hashish oil, which was seized then and there at the spot on 31.03.2024. Subsequently, the Investigating Officer has apprehended the petitioner/second accused and found him in alleged possession of 5 ml of hashish oil. It is now contended that there is another person involved in the crime, who has been arrayed as the 3rd accused. The Standing Counsel has now stated that the Investigating Officer has incorporated Section 27A of the Act on the allegation that there are certain financial transactions between the accused 1 and 2.

7. Indisputably, the contraband that was seized from the petitioner falls within the specification of intermediate quantity as per the specification under the Act. At that point of time, Section 27A was not incorporated. It is now, as per the statement of the Standing Counsel, the said provision is said to be incorporated. It is well settled by the Hon'ble Supreme Court in Mohd. Muslim @ Hussain V. State (NCT of Delhi) [2023 KHC Online 6336] and this Court in Amal E & Anr V. State of Kerala [2023 Live Law (Ker) 329] that mere financial transactions will

not suffice to attract the offence under Section 27A of the Act. However, that is a matter to be investigated and finally decided at the time of trial. The fact remains that the petitioner has been in judicial custody for the last 70 days, the investigation in the case is practically complete and the petitioner does not have any criminal antecedents. Moreover, the contraband that was allegedly seized from the petitioner is of an intermediate quantity.

8. After bestowing my anxious consideration, rival submissions made across the Bar and the materials placed on record, especially considering the fact that the petitioner has been in judicial for the last 70 days, that the investigation in the case is practically complete, that the contraband involved in the case is of an intermediate quantity and the petitioner does not have any criminal antecedents, I am of the view that the petitioner is entitled to be released on bail. Therefore, I am inclined to allow the bail application.

In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

(i) The petitioner shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m for a period of two months or till the final report is filed, whichever is earlier. He shall also appear before the Investigating Officer as and when required;

(ii)The petitioner shall not directly or indirectly make any inducement, threat or procure 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 or tamper with the evidence in any manner, whatsoever;

(iii) The petitioner shall not commit any offence while he is on bail;

(iv) The petitioner shall surrender his passport, if any, before the court below at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the court below on the date of execution of the bond;

(v) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

(vi) Applications for deletion/modification of the bail conditions shall be filed and entertained before the court below.

(vii) Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in Sushila Aggarwal v. State (NCT of Delhi) and another [2020 (1) KHC 663].

