

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 05TH DAY OF MAY 2020 / 15TH VAISAKHA, 1942

BA.NO.2079 OF 2020

(Crime No.18/2019 of Excise Range office, Thalassery, Kannur
Dist.)

PETITIONER/ACCUSED

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Rinshad , S/o. Kasim , aged 30/19 years
Rabiya Quarters , Opp. Lottus Talkies,
Thiruvangad amsom desom ,Talassery Taluk
Kannur District,Kerala PIN

BY Advs.Deepa.S & K.Lasitha

RESPONDENTS/COMPLAINANT:

State of Kerala,
Represented by Public Prosecutor,
High Court of Kerala, Ernakulam.

BY P.P.SRI.AJITH MURALI & SANTHOSH PETER(SR)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 05.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.2079 of 2020

Dated this the 5th day of May, 2020

O R D E R

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

2. Petitioner is the accused in Crime No. of 18 of 2019 Excise Range Office Thalassery. The above case is registered against the petitioner alleging offences punishable under Section 22 (c) of NDPS Act, 1985. Petitioner was arrested on 21.02.2020 and he is in custody.

3. The prosecution case is that the petitioner was found in possession of 20 gms of MDMA ON 14.04.2019 at a place called Ayiramkoni in Thiruvangad amsom desom of Thalassery Taluk.

4. The counsel for the petitioner submitted that the petitioner is in custody from 21.02.2020 onwards. He has

not committed any offence. He is ready to abide any conditions imposed by this Court, if he is released on bail.

5. The learned Public Prosecutor opposed the bail application. He submitted that, originally bail was granted to the petitioner. Subsequently, as per order dated 28.02.2020, his bail was cancelled for committing similar offence. In such circumstances, he is not entitled bail.

6. After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. The petitioner was originally released on bail, because the final report was not filed even after 180 days. Subsequently, the bail granted to the petitioner was cancelled for violation of the bail conditions. That order is not challenged by the petitioner. Instead of that the petitioner filed a fresh bail application before the Special Judge. The same was dismissed by the Special Judge, observing that the bail was cancelled as per order dated 28.02.2020, vide order in CMP No.70/2020. It is an admitted fact that the order cancelling

bail is not challenged by the petitioner and the same became final. In such situation, I am not in a position to consider the bail application of the petitioner at this stage. Moreover, the offence alleged against the petitioner are very serious, he was found in possession of 20 gms of MDMA. He violated the conditions of bail granted by the Court and hence rearrested. Taking into the entire circumstances, I think the petitioner is not entitled to bail in the larger interest of the society.

7. Moreover, the jurisdiction to grant bail has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in **Chidambaram P v Central Bureau of Investigation (AIR 2019 SC 5272)** the following factors are to be taken into consideration while considering the application for bail.

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials

relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

It is true that there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be decided on the basis of the facts and circumstances of that case. In the light of the general principles laid down in the above judgment and considering the facts and circumstances of this case, I am

of the opinion that this is not a fit case in which the petitioner can be released on bail. Hence this Bail Application is dismissed.

P.V.KUNHIKRISHNAN, JUDGE

VPK