

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 08TH DAY OF MAY, 2020 / 18TH VAISAKHA, 1942

B.A. No.2663 /2020

(SC No. 35/2018, pending before the Special Court (NDPS Act cases), Thodupuzha in Crime No.1103/2017 of Kattapana Police Station, Idukki District)

Petitioner/Accused No.1

Abin Divakaran, aged 37 years,
S/o DivakaranUrumbil House,
Thiruvallapady Bhagom, Nedumkandomkara,
Paarathodu Village, Idukki District

By Advs

Sri. P.K.Varghese

Sri. P.T.Manoj

Smt. Sanjana Rachel Jose

Respondent/Complainant

State of Kerala

Represented by the Public Prosecutor,

High Court of Kerala, Ernakulam-682031

SRI. AJITH MURALI , PP

SRI. SANTHOSH PETER SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.2663 of 2020

Dated this the 8th 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 1st accused in Crime No.1103 of 2017 of Kattapana Police Station. The above case is registered against the petitioner and others alleging offences punishable under Sections 21(c), 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act.

3.The prosecution case is that on 20.08.2017, at 4 am, the petitioner and other accused were found transporting 17.2kg of Hashish Oil in a car bearing registration No.KL-08-AS-7436. On seeing the police, the petitioner and the driver ran away. But, later surrendered on 01.09.2017.

4. The counsel for the petitioner submitted that the petitioner is in custody from 01.09.2017 onwards. The trial of

the case is not over. Indefinite incarceration of the petitioner is not necessary in this case.

5.The learned Public Prosecutor submitted that the case is pending as SC No.35 of 2018 before the Special Court (NDPS Act cases) Thodupuzha. The case is pending trial. The petitioner earlier approached this Hon'ble Court with 3 bail applications and all the bail applications were dismissed.

6.After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. The petitioner and other accused were found in possession of huge quantity of Hashish Oil. The petitioner earlier approached this Court for bail and after consideration of all the aspects, this Court dismissed the bail application. There is no change of circumstances. In such circumstances, I think this is not a fit case in which the petitioner is entitled for bail at this stage.

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

YKB