

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 15TH DAY OF MAY 2020 / 25TH VAISAKHA, 1942

BA NO.2702 OF 2020

(Crime No. 01/2020 of Palakkad Excise Circle, Palakkad District)

Applicant/Accused:

Abhijith, aged 21 years,
S/o. Padmanabhan,
Puthenpurayil House, Cheruthuruthi,
Vadakkekkad, Thrissur- 679562

By Adv. Sri Vipin Narayan
Adv. Smt. Sruthy N Bhat

Respondent/Complainant:

State of Kerala, represented by
Public Prosecutor,
High Court of Kerala, Ernakulam-682031

By P.P. Sri.B.JAYASURYA (SR) & C.K.PRASAD

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 15.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No. 2702 of 2020

Dated this the 15th 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/applicant is the accused in Crime No. 1 of 2020 of Palakkad Excise Range registered alleging offences punishable under Section 22(c) of the NDPS Act. Petitioner was arrested on 13-01-2020 and he is in custody.

3.The prosecution case is that on 13-01-2020 at about 3.45 pm, the Excise party found the applicant in possession of 12.400gms of MDMA in Palakkad Junction Railway Station.

4. The counsel for the petitioner submitted that the petitioner is innocent. He also submitted that he has no

connection to this case and he is trapped in this case. He also submitted that he is in custody from 13.1.2020 onwards.

5. The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor submitted that the quantity seized from the petitioner is commercial quantity of MDMA. Therefore, this court may not entertain this bail application. When, the learned Public Prosecutor oppose the bail application, as per Section 37 of the NDPS Act, there are some limitations to the court to grant bail. Moreover, it is a case where commercial quantity of MDMA is alleged to be seized from the petitioner. The petitioner was arrested on 13.1.2020.

6. Considering the facts and circumstances of this case, and considering the serious oppositions of the learned Public Prosecutor I am not in a position to entertain this bail application, especially in the light of

Section 37 of NDPS Act.

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 apex court held that, 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

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