

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
TUESDAY, THE 5TH DAY OF MAY, 2020 / 15TH VAISAKHA, 1942

B.A. TMP No. 179 / 2020
(Crime no. 85/2019 of Kozhikode Railway Police Station, Kozhikode District)

APPLICANT/ SOLE ACCUSED:-

Kuna Subha Rao, aged 55 years, S/o Kuna Sathya Narayana,
5/18, Bheemavaram, Mandalam, Nr.Elementary School 2,
Rayalam Thottam Village, Goddavari West, Andhra Pradesh

By Adv S K Adhithyan & Adv M P Priyesh Kumar

RESPONDENT/COMPLAINANT:-

1. Station House Officer,
Kozhikode Railway Police Station,
Kozhikode, PIN- 673020
2. State of Kerala, represented by the Public Prosecutor,
High Court of Kerala, Ernakulam, PIN- 682031

SRI. AJITH MURALI, PP
SRI. SANTHOSH PETER, SR. PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05.05.2020, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.TMP No.179 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 sole accused in Crime No.85 of 2019 of Kozhikode Railway Police Station, Kozhikode registered alleging offence punishable under Section 20(b)(ii)C of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act). The petitioner was arrested on 27.07.2019.

3.The prosecution case is that on 27.07.2019, the accused was found in possession of 40.52 Kilo grams of ganja in two plastic sacks in the 4th platform of the Kozhikode Railway Station.

4. The counsel for the petitioner submitted that the petitioner is in custody from 27.07.2019 onwards. He may be released on bail on imposing any stringent conditions.

5.The learned Public Prosecutor opposed the bail application and submitted that the huge quantity of ganja was seized from the petitioner and he may not be released on bail .

6.After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. Huge quantity of ganja seized from the petitioner. Moreover, the jurisdiction of this court to grant bail in an NDPS case is very limited in the light of Section 37 of the NDPS Act. Considering the quantity of the contraband seized from the petitioner and other circumstances of the case, I think the petitioner is not entitled for bail.

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