

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.1929 OF 2020

Crime No. 347 of 2019 of Hosdurg Police Station (Kasaragod District)

Petitioners/ 3rd Accused:

1. Muhammed Savad, aged 31 years
S/o. Sulaiman P
Puthiyakandam House
Kallooravi, Kanhangad
Hosdurg Taluk, Kasargod District

By Advs. Sri. Rahul Sasi and Smt. Neethu Prem

Respondents /Complainants

1. State of Kerala, Rep. by Public Prosecutor
High Court of Kerala, Ernakulam
- 2.The Station House Officer
Hosdurg Police Station

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.TMP.No. 1929 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 3rd accused in Crime No.347 of 2019 of Hosdurg Police Station registered alleging offence punishable under Sections 22(c) and 29 of Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, NDPS Act). Petitioner was arrested on 9.1.2020 and he is in custody.

3.The prosecution case is that the petitioner and other accused were found in possession of 19.150 gms of MDMA on 20.5.2019 at 11.55 am at Kanhangad South in vehicle bearing registration No.KL 10 T 4000.

4. The counsel for the petitioner submitted that he is innocent and he is in custody from 9.1.2020 onwards. The counsel for the petitioner also submitted that the petitioner is ready to abide any conditions if this court grant bail to him.

5.The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor submitted that the accused was found in possession of Psychotropic Substance. Huge quantity is seized. It is also submitted that he was absconding after the incident and went abroad.

6.After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. The petitioner was found in possession of 19.150gms of MDMA. It is a huge quantity. Moreover, the case was registered in 2019. The petitioner was absconding and went abroad. Subsequently, he was arrested. When the bail application is opposed by the Public Prosecutor, as per Section 37 of the NDPS Act, the jurisdiction of this

court is limited. Considering the facts and circumstances of this case, I think this is not a fit case, in which the bail is to be granted 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