

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. No. 2055 / 2020

(Crime No.12/2020 of the Excise Range Office, Nilambur, Malappuram District)

**Petitioner/Accused No.1:-**

Sreeraj, S/o.Gangadharan,  
Aged 25 years, Valiyavalappil House,  
Neduva, Chettipary, Parappanangadi,  
Malappuram District.

By Adv.Sri. RAKESH K

**Respondents/State & Complainant:-**

1. The State of Kerala, represented by  
The Public Prosecutor, High Court of Kerala,  
Ernakulam, Kochi- 682 031.
2. The Excise Inspector,  
Excise Range, Nilambur,  
Malappuram District, Pin – 679 329

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**

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B.A.No.2055 of 2020  
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Dated this the 5<sup>th</sup> 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.12 of 2020 of Nilambur Excise Range registered alleging offences punishable under Sections 22(c), 20(b)(ii)A, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act).

3.The prosecution case is that the petitioner was found in possession of 56.64 gm of Ganja, 490 mg of LSD, 4.122 gm of MDMA crystals and 21.22 gm of MDMA pills on a motorbike at Anamari desom, Vazhikkadavu. The petitioner and the other accused were arrested on 19.02.2020.

4. The counsel for the petitioner submitted that the petitioner is in custody from 19.02.2020 onwards and he may be released on bail on imposing any stringent conditions.

5.The learned Public Prosecutor opposed the bail application and submitted that the petitioner committed serious offence and the contraband seized is also huge in quantity.

6.After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. Huge quantity of Narcotic Drugs and Psychotropic Substances is seized from the petitioner. Of course it is a matter to be proved in a trial. But, the bail application of the petitioner cannot be considered at this stage because the learned Public Prosecutor opposed the bail application. In NDPS Act cases if the learned Public Prosecutor opposed the bail application, the power of this court to grant bail is limited. Considering the quantity of the contraband seized from the petitioner and other circumstances of this 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