

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 TMP.NO.221 OF 2020

(CRIME NO. 16 of 2015 of NARCOTIC SPECIAL SQUAD, ADIMALY)

PETITIONER/ACCUSED:

Safeer,
Aged 26 years,
S/o Yahiya,
Vrikshvilasamthoppu House,
Vandanam,
Punnapra Village, Alappuzha

By Adv. Smt. Sreelekshmi Sanalkumar

Respondent/ Complainant

State of Kerala,
Represented by,
The Public Prosecutor,
High Court of Kerala, Ernakulam,
Kochi- 680031

BY Public Prosecutor SRI.AJITH MURALI & SRI.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.221 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. The petitioner is the accused in Crime No.16/2015 of Narcotic Special Squad, Adimaly. The above case is registered against the petitioner alleging offence punishable under Section 20(b)(ii)B of the Narcotic Drugs and Psychotropic Substances Act. The petitioner is in custody from 27.12.2019 onwards.

3. The prosecution case is that, the petitioner was found in possession of 1.200 Kgs. of ganja. The learned counsel for the petitioner submitted that the petitioner was arrested on 27.12.2019 and he is in custody from that date onwards. The petitioner is ready to abide any condition, if this Court grant bail. The learned counsel for the petitioner also submitted that the final report in the case is already submitted.

4. The learned Public Prosecutor submitted that the bail was granted to the petitioner at the crime stage. Thereafter, final report was filed and the case was numbered as S.C.No.12/2016 before the court concerned. But the petitioner absconded and refused to appear before the court. Notice was issued to the sureties. Even though the notice was served to the sureties, they did not produce the petitioner. Hence the case was transferred to long pending case register as L.P.No.3/2017. Thereafter, the petitioner was arrested on 27.12.2019 and the case is now pending before the court below.

5. The learned Public Prosecutor opposed the bail application.

6. After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. The petitioner after availing the benefit of bail, refused to appear before the court below violating the conditions in the bail order. This crime is registered in the year 2015. The final report was filed in the year 2016. The petitioner was absconding for about

three years and he was arrested only on 27.12.2019. In such circumstances, I feel that the petitioner is not entitled for bail at this stage. Moreover, once the learned Public Prosecutor oppose the bail application, the jurisdiction of this Court to entertain a bail application filed in NDPS Act case is limited.

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