

SESSIONS DIVISION, KOLLAM

IN THE PRINCIPAL SESSIONS COURT

Present: Smt. M.B. Snehalatha, Prl. Sessions Judge, Kollam

Wednesday the 23rd day of November, 2022/02nd Agrahayana, 1944**Crl. M.C. No. 2310/2022 in****Crime. No. 50/2022 of Excise Enforcement & Anti Narcotic Special Squad, Kollam**

Petitioner : Praveen, Aged. 23 years, S/o. Omanakuttan,
Charinjayyathu, Anayadi P.O, Sooranad North,
Kollam.

By Adv. Kampiyil .K. Vipin Mohan Unnithan

Respondent : State of Kerala represented by the Excise
Inspector, Excise Enforcement & Anti Narcotic
Special Squad, Kollam through the Public
Prosecutor, Kollam.

This petition is filed u/s 439 of Cr. P.C having come up for consideration on 23-11-2022 on the same day the court passed the following.

ORDER

Application under Section 439 Cr.P.C. seeking regular bail.

2. Petitioner is A2 in Crime No. 50/2022 of Excise Enforcement and Anti-Narcotic Special Squad, Kollam, registered for the offences punishable under Sections 22 (c) & 20 (b) (ii) A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. Prosecution case is that on 05.10.2022 at 2 a.m., A1 to A3 were found in possession of 51.1457 grams of MDMA which they had kept in a rented building near Thodiyoor Puliyoor Vanchi Thekkumuriyil.

25 grams of ganja kept in the scooter bearing Reg. No. KL 31/P—8556 kept in the premises of the said building was also seized. The contraband was seized by the Circle Inspector of Excise Enforcement and Anti-Narcotic Special Squad, Kollam.

4. Petitioner/A2 was arrested on 05.10.2022 and he is in judicial custody since then.

5. Petitioner/A2 would contend that he was falsely implicated. Petitioner/A2 was arrested on 05.10.2022 and he is in judicial custody for the last 43 days. Petitioner/A2 is the only breadwinner of his family. Petitioner/A2 is ready to abide by any conditions which may be imposed by this court if bail is granted.

6. Bail application was strenuously opposed by the learned Public Prosecutor by reiterating the prosecution allegations. In the factual report filed by the investigating officer, it has been stated that if the petitioner/A2 is released on bail, he may tamper with the evidence by influencing the witnesses and there is also possibility of absconding and repeating similar offence.

7. Heard the learned counsel for the petitioner/A2 and the learned Public Prosecutor.

8. Perused the records.

9. Prima-facie, there are sufficient materials which would reveal the seizure of commercial quantity of MDMA from the conscious possession of A1 to A3. Apart from MDMA, 25 grams of ganja which had

been kept in the scooter bearing Reg. No. KL 31/P—8556 kept in the premises of the said building was also seized. It is not assumable that the petitioner/A2 was falsely implicated in the crime as contended by him.

10. Section 37 of the NDPS Act provides that persons accused of offence under the Act involving commercial quantity shall not be released on bail unless court is satisfied that there are reasonable grounds for believing that accused is not guilty and is not likely to commit any offence while on bail.

11. A reading of Section 37 of NDPS Act 1985 would show that the exercise of power to grant bail is not only subject to the limitation contained in Section 439 Cr.P.C., but also subject to the limitations placed by Section 37 which commences with non-obstante clause. The twin relevant conditions are (1) the satisfaction of the court that the accused is not guilty of the alleged offence and that (2) he is not likely to commit any offence while on bail.

12. Given the seriousness of the offences punishable under the NDPS Act and in order to curb the menace of drug trafficking, stringent parameters for grant of bail under the NDPS Act have been prescribed. The court must be conscious about the mischief that is sought to be curbed by the Act. The court ought to satisfy on the basis of the reasonable ground discernible from the facts and the circumstances that the accused is not guilty of offences leveled against him. The court must also need to be

satisfied that the person so released will not commit the offence while being on bail.

13. I find merit in the case put forward by the prosecution that a thorough probe has to be conducted with respect to the source of MDMA and ganja seized from the conscious possession of the accused. The nature and gravity of the offence alleged against the petitioner/A2 and the rigour under Section 37 of NDPS Act and the possibility of repeating similar offences by him, if enlarged on bail, disentitle the petitioner/A2 in releasing him on bail at this stage of investigation.

Accordingly, this petition for bail stands dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open Court on this the 23rd day of November, 2022.)

Sd/-
M. B. Snehalatha,
Sessions Judge.

//True Copy//

Sheristadar

Copy to:- The Excise Inspector, Excise Enforcement & Anti Narcotic
Special Squad, Kollam.

Typed by : Vineetha. R
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