

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 30TH DAY OF NOVEMBER 2017/9TH AGRAHAYANA, 1939

Bail Appl..No. 8211 of 2017 ()

CRIME NO. 40/2017 OF EXCISE ENFORCEMENT AND ANTI NARCOTIC SPECIAL
SQUAD, PALAKKAD

PETITIONER(S)/ACCUSED 1 AND 2::

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1. MOHAMMED SHAMEEM,
AGED 22, S/O.MOHAMMED, CHANDHANATHIL HOUSE,
ERAMANGALAM VILLAGE, PONNANI TALUK, MALAPPURAM.
 2. RENI REJI,
AGED 22, S/O.REJI VARGHESE,
KALLELIL HOUSE, MULAKKULAM NORTH POST,
PIRAVOM VILLAGE, MUVATTUPUZHA TALUK,
ERNAKULAM DISTRICT.

BY ADVS.SRI.SAIJO HASSAN
SRI.BENOJ C AUGUSTIN
SRI.RAFEEL. V.K.
SRI.VISHNU BHUVANENDRAN
SRI.U.M.HASSAN
SMT.P.PARVATHY

RESPONDENT/STATE:-:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI AJITH MURALI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 30-11-2017, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.V.

RAJA VIJAYARAGHAVAN V, J

B.A No.8211 of 2017

Dated this the 30th day of November, 2017

ORDER

- 1.This application is filed under Section 439 of the Code of Criminal Procedure.
- 2.The petitioners herein are the accused Nos.1 and 2 in Crime No.40 of 2017 of Excise Enforcement and Anti Narotic Special Squad, Palakkad registered alleging offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.
- 3.The prosecution allegation is that on 23.9.2017 at about 1.10p.m., the petitioners were found in possession of 450 numbers of Nitrazepam Tablets having a net weight of 225 gms without cover and 316 gms including cover.
- 4.The learned counsel appearing for the petitioners submitted that the quantity seized is intermediate in nature. The arrest of the petitioners was on 23.09.2017, and more than 60 days have elapsed. The learned counsel submits that the right to be enlarged on statutory bail is an indefeasible right and the petitioners are prepared to offer bail.
- 5.The learned Public Prosecutor on instructions admits the

position that the final report has not been laid till date.

6. In all cases, where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment, then Section 167 (2)(a)(ii) of Cr.P.C. will apply and the accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed. (see Rakesh Kumar Paul v. State of Assam [2017(4) KHC 470]. The offence alleged against the petitioners will fall in this category. The proviso to Section 167 (2) of the Code of Criminal Procedure would apply for offences under the NDPS Act as held by the Apex Court in Union of India v. Thamisharasi and Others [1995 (4) SCC 190]. They are, therefore, entitled to be released on default bail.

In the result, this application will stand allowed. However, it shall be subjected to the following conditions:

- 1). Each of the petitioners shall be released on bail on their executing a bond for Rs.50,000/-(Rupees Fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the court having jurisdiction.

- 2). The petitioners shall appear before the Investigating Officer on all Saturdays between 9 AM and 11 AM, for 3 months or till final report is filed, whichever is earlier.

3)The petitioners shall not intimidate or attempt to influence the witnesses; nor shall they tamper with the evidence.

4)The petitioners shall surrender their passport before the court below or if they do not have one they shall file an affidavit to that effect within five days of his release.

5). The petitioners shall not commit any offence while they are on bail.

6).The petitioners shall not leave the country without the permission of the concerned Court.

In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with the law.

Sd/-

RAJA VIJAYARAGHAVAN V, JUDGE

//TRUE COPY//

P.A. TO JUDGE

AD