

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

WEDNESDAY, THE 30TH DAY OF JUNE 2021 / 9TH ASHADHA, 1943

BAIL APPL. NO. 3613 OF 2021

ALUVA EXCISE RANGE OFFICE, ERNAKULAM

(CRIME NO.4 OF 2021)

PETITIONER/ACCUSED:

NITHIN NATH T.V
AGED 26 YEARS
THOTTUNGAPURACKAL HOUSE,
VELLIYAMCODE P.O, MALAPPURAM
MALAPPURAM, PIN - 679579

BY ADV BASIL CHANDY VAVACHAN

RESPONDENT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM, PIN - 682031

BY SENIOR PUBLIC PROSECUTOR- ADV SRI. SANTHOSH
PETER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
30.06.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER

Petitioner is the first accused in Crime No.4/2021 of Excise Range office, Aluva, which was registered on 20.03.2021 after seizing 42.5 kg of dry ganja from two persons including the petitioner. Since then he is in judicial custody. Now offence under Section 20(b)(ii)(C) of N.D.P.S Act is alleged against the petitioner and another.

2. The learned counsel for the petitioner strongly pleaded for releasing him on bail. According to the learned counsel, even though it is stated in the occurrence report that 42.5 kg was seized from the petitioner and another, in fact, only 20kg were seized from the trolley allegedly carried by the petitioner. Even if the case of the prosecution is admitted, seed and flowers are liable to be excluded from the quantity; that means, if a single gram is reduced, the contraband should fall short of commercial quantity and that the embargo under Section 37 of the Act will not work against him.

3. According to the learned counsel, he cannot be made liable

for possession of commercial quantity and therefore, he is entitled to get bail since he was carrying only intermediary quantity. The learned counsel also submitted that he is a student in Marine Engineering, he is the only son of the aged mother and therefore, indulgence may be shown on him.

4. The learned Public Prosecutor has strongly opposed the application. According to him, total 42.5 kg of ganja was seized from both the persons, the petitioner and the 2nd accused. Even assuming that the petitioner was carrying 20kg only, even that will attract Section 20(b)(ii)(C) of the N.D.P.S Act and thus the embargo under Section 37 of the Act will come into play.

5. After hearing the counsel on both sides, I am not inclined to hold that this Court is bound to consider the quantity something less than 20kg as suggested by the learned counsel. Probably, on a subsequent occasion, he may be able to establish that he was not carrying commercial quantity. Whatever it may be, for the time being, so long as the learned Public Prosecutor has strongly opposed the application and since there are no reasons to think that the petitioner is not guilty, the embargo under Section 37 is attracted and

that means, there is a statutory injunction on the Court in granting bail to the petitioner.

The application is dismissed.

Sd/-

**K.HARIPAL
JUDGE**

Jms/30.06

//True Copy//

P.A to Judge