

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 31ST DAY OF JANUARY 2024 / 11TH MAGHA, 1945

BAIL APPL. NO. 328 OF 2024

CRIME NO.591/2023 OF KODUVALLY POLICE STATION, KOZHIKODE

PETITIONER/ACCUSED NO.1:

HABEEB RAHMAN,
AGED 44 YEARS
S/O ABOOBACKER KUTTY MUSLIAR, PUTHAN PEEDIKAYIL
HOUSE, VALIYAPARAMBA POST, KOZHIKODE, PIN - 673572

BY ADVS.
C.S.MANU
DILU JOSEPH
C.A.ANUPAMAN
T.B.SIVAPRASAD
C.Y.VIJAY KUMAR
MANJU E.R.
ANANDHU SATHEESH
ALINT JOSEPH
PAUL JOSE

RESPONDENT/COMPLAINANT:

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

OTHER PRESENT:

SR PP SRI C S HRITHWIK

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31.01.2024, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O R D E R

The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the first accused in Crime No.591/2023 of the Koduvally Police Station, Kozhikode, registered against the accused (2 in number) for allegedly committing the offences punishable under Sections 22(b) r/w. Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, the Act). The petitioner was arrested on 18.12.2023.

2. The gist of the prosecution case is that; around 2 p.m on 23.09.2023, the police got an information that a car was involved in an accident and two persons were trapped in the car. When the police party reached the scene of occurrence, the first accused ran away. The police party on searching the car found that there was 3.25 gms. of MDMA in the car. Thus, the accused have committed the above

offences.

3. Heard Sri.C.S.Manu, the learned counsel appearing for the petitioner and Sri.C.S.Hrithwik, the learned Senior Public Prosecutor appearing for the respondent.

4. The learned counsel appearing for the petitioner submitted that the petitioner is totally innocent of the accusations leveled against him. He has been falsely implicated in the crime. The petitioner has no criminal antecedents. The petitioner has been in judicial custody since 18.12.2023. The investigation in the case is practically complete. The recovery has been effected. The petitioner has reliably learnt that, the contraband article is not MDMA, as alleged by the prosecution. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the application. He contended that there is incriminating materials against the petitioner to establish his complicity. However, he conceded to the fact that, as per the chemical analysis report dated 20.10.2023 issued by the Chemical

Examiner's Laboratory Department, Kozhikode, the contraband article is 'methamphetamine' and not 'MDMA'. Therefore, the contraband is of intermediate quantity.

6. The prosecution case was lodged against the accused principally on the allegation that the accused were found in possession of 3.25 grams of 'MDMA', which is of a commercial quantity. It is on the basis of the said accusation, that the petitioner was arrested on 18.12.2023 and was remanded to judicial custody. It has now turned out that, as per the chemical analysis report dated 20.10.2023, the contraband that was allegedly seized is 'methamphetamine' and not 'MDMA'. Therefore, the contraband is only of intermediate quantity.

7. After bestowing my anxious consideration to the materials placed on record, particularly to the chemical analysis report which shows that the contraband is methamphetamine and is of intermediate quantity, that the petitioner is in custody since 18.12.2023, that the petitioner has no criminal antecedents and, that the investigation is

practically complete, I am of the view that the petitioner is entitled to be released on bail, subject to stringent conditions.

In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

- (i) The petitioner shall appear before the Investigating Officer on every alternate Saturday between 9 a.m. and 11 a.m for a period of three months or till the final report is filed, whichever is earlier. He shall also appear before the Investigating Officer as and when required;
- (ii) The petitioner shall not directly or indirectly make any inducement, threat or procure to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;
- (iii) The petitioner shall not commit any offence while

he is on bail;

- (iv) The petitioner shall surrender his passport, if any, before the court below at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the court below on the date of execution of the bond;
- (v) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.
- (vi) Applications for deletion/modification of the bail conditions shall be filed and entertained before the court below.
- (vii) Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in **Sushila Aggarwal v. State (NCT of Delhi) and another** [2020 (1) KHC 663].

Sd/-
C.S.DIAS
JUDGE