

Bristy Biswas Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: March 1, 2021

Acts Referred: Code Of Criminal Procedure, 1973 " Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 " Section 19, 20(b)(ii)(A), 22(a), 22(b), 22(c), 24, 27, 27(A), 29, 37, 37(1)(b)

Hon'ble Judges: Ashok Menon, J

Bench: Single Bench

Advocate: Khadeeja Rishbath Kallingal, Ashish Gopal K G, Sreeja K.S, Anju J.V, Peter Jibin I.G

Final Decision: Allowed

Judgement

1. Applications for regular bail under Section 439 of the Cr.P.C.

2. The applicant in B.A.No.9387/2020 is the 9th accused while the applicant in B.A.No.401/2021 is the 6th accused in Crime No.597/2020 of

Vagamon Police Station, Idukki. The offences alleged against the applicants and the other co-accused in the aforesaid crime are punishable under

Sections 20(b)(ii)(A), 22(a), 22(b), 22(c), 27 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. The prosecution case, in brief, is thus: On getting information about a D.J.party being organised in a resort named the Cliff Inn at Vagamon, the

Inspector of Police reached there on 20/12/2020 and conducted a search between 22:30 hours on that day and up to 5:00 hours on 21/12/2020.

Various quantities of Ecstasy Pills, Ecstasy Powder, hashish, L.S.D stamps, charas, MDMA and Ganja were seized from each of the accused. It is

contended that the D.J. party was arranged by the accused for the consumption, sale and distribution of the aforementioned narcotic drugs and

psychotropic substances, and information was passed to all by means of a WhatsApp group named and styled as 'AADRAADRA'. It is alleged that it

was the result of a conspiracy hatched by all the participants.

4. Accused 6 to 8 were staying in a room from where 7.8 grams of dry Ganja was seized from the belongings of 6th accused. On conducting search

of 9th accused with the help of women CPOs and the women Gazetted Officer, 6.45 grams of dry Ganja and the packet of herb rolling paper was

seized from the personal possession. The applicants were arrested on the aforesaid date and remanded to judicial custody. The seizures included small

quantity, intermediary quantity and commercial quantity of narcotics.

5. The applicants state that they are innocent and that only small quantity of dry Ganja was seized from their possession, and therefore, they may be

released on bail. The Superintendent of Police, Crime Branch, Idukki has filed objections stating that the accused are part of a larger network and that

the narcotics were brought from Bangalore and distributed among the members of the group. Since they are part of the conspiracy, each one of them

liable for the entire quantity of drugs seized. The bail application is opposed with vehemence.

6. Heard the learned Senior Counsel Sri P.Vijayabhanu appearing for 6th accused instructed by Advocate Sri S.Rajeev. Advocate Smt.Khadeeja

Rishbath Kallingal appeared for 9th accused. The learned Prosecutor was heard on behalf of the State. Records perused.

7. The learned Senior Counsel Sri Vijayabhanu submits that 6th accused had gone to the resort with his friends, accused 7 and 8, to celebrate his

birthday. He has no connection with the WhatsApp group and has nothing to do with the D.J.party. Smt.Khadeeja submits that 9th accused is an

Engineering student, and she too has no connections with the WhatsApp group or the D.J. party. It is submitted that the applicants have no criminal

antecedents and that the Ganja seized from them is only a small quantity. Hence they are entitled to be released on bail.

8. After having heard the submissions and gone through the objections filed by the prosecution, I find that there is no substantial evidence collected

against the applicants to indicate that they are members of the group which had hatched a conspiracy to use, sell and distribute narcotic drugs or any

psychotropic substance. The accused were also not found together, and there is no indication of any communication among them. The applicants have

no criminal antecedents. The rigour under Section 37 of the NDPS Act may not be attracted as against the applicants, as they were only in possession

of small quantity of Ganja. The F.I.R indicates inclusion of offences for possession of small, intermediary and commercial quantities of psychotropic

substances. For the possession of Ganja, there is only the inclusion of Section 20(b)(ii)(A) and that is what is found applicable to the applicants.

Section 37(1)(b) prescribes restrictions on granting bail only in cases of offences under Sections 19, 24 and 27A and for offences involving

commercial quantity. The applicants have only committed an offence punishable under Section 20(b)(ii)(A) for possession of small quantity of Ganja.

It is true that Section 29 is incorporated, but there are no materials available at present to indicate that the applicants were part of the conspiracy.

Under the circumstances, there is no embargo in granting bail to the applicants. The applications are to be allowed.

In the result, both the applications are allowed and the applicants are directed to be released on bail on execution of bond for â,1,00,000/- (Rupees one

lakh only) each, with two solvent sureties for like amount each to the satisfaction of the jurisdictional Court, and on following further conditions:

- i) They shall appear before the investigating officer as and when called for and cooperate with the investigation;
- ii) They shall not get involved in any crime of similar nature during the bail period;
- iii) They shall not tamper with evidence, influence or intimidate witnesses.

In the event of breach of the above conditions, the prosecution shall be at liberty to approach the jurisdictional Court for cancellation of the bail.