
Abdul Suhail Vs State Of Kerala

Bail Application No. 1451 Of 2022

Court: High Court Of Kerala

Date of Decision: March 3, 2022

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 â€” Section 20(b)(ii)(A), 22(C), 25, 29, 37#Kerala Police Act, 2011 â€” Section 118(1)#Indian Penal Code, 1860 â€” Section 34

Hon'ble Judges: Gopinath P, J

Bench: Single Bench

Advocate: M.Sreekumar, C.K. Suresh

Final Decision: Dismissed

Judgement

Gopinath P, J

1. The petitioner is the accused in NDPS Crime No.461/2021 of Meppadi Police Station, Wayanad District alleging commission of offences under

Sections 22 (C), 20 (b) (ii) (A) and 29 and Section 25 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'NDPS Act'

for short) and also under Section 118 (1) of the Kerala Police Act, 2011 read with Section 34 of the Indian Penal Code.

2. The petitioner was found in possession of 22.180 gms of MDMA, 0.970 gms of MDMA extecy and 2.330 gms of hashish. Additional 1170 packets

of banned tobacco products was also recovered from the petitioner.

3. The learned counsel appearing for the petitioner would submit that the petitioner is absolutely innocent in the matter. It is submitted the petitioner

was falsely implicated. It is stated that the quantity of MDMA recovered from the petitioner cannot be said to be in commercial quantity, as,

admittedly, the weight was determined along with a cover in which the drugs were allegedly stored. It is submitted that for the purposes of this bail

application it must be assumed that the quantity of MDMA was less than commercial quantity. It is submitted that the petitioner has been in custody

from 20-09-2021 (164 days) and that his continued detention is not necessary for the purpose of any investigation.

4. The learned Public Prosecutor vehemently opposes the grant of bail. It is submitted that the petitioner was clearly dealing in banned narcotic drugs

and other tobacco products. It is submitted that the narcotic drugs were cleverly concealed by the petitioner. It is submitted that the quantity of

MDMA recovered from the petitioner was 22.180 gm and even if weight of the cover is to be excluded, the material will still be in commercial

quantity. It is submitted that considering the provisions of Section 37 of the NDPS Act the petitioner cannot be granted bail as there are no reasonable

grounds to believe that the petitioner is not guilty of the offences alleged against him.

5. Having heard the learned counsel for the petitioner and the learned Public Prosecutor, I am of the view that this is a case where the provisions of

Section 37 of the NDPS Act are attracted. Though the argument of the learned counsel for the petitioner that in determining whether the MDMA was

in commercial quantity the weight of the cover is not factored appears to be attractive, at first blush, the same must fail for the reason the MDMA

recovered is 22.180 gms. Even if one were to factor the weight of the cover, it is difficult to assume, at this stage that the quantity of MDMA will be

less than 10 gms which is the limit for commercial quantity of MDMA. The twin conditions of under Section 37 therefore apply. I have no reasonable

ground to hold that the petitioner is not guilty of the offence alleged. Therefore the petitioner is not entitled to bail in terms of Section 37 of the NDPS

Act. Bail application fails and it is accordingly dismissed.