

**K.P. Ayamu Vs State Of Kerala****Bail Application No. 10507 Of 2022**

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**Court:** High Court Of Kerala**Date of Decision:** Jan. 17, 2023**Acts Referred:**

Narcotic Drugs and Psychotropic Substances Act, 1985 " Section 20(b)(ii)B, 50

**Hon'ble Judges:** Viju Abraham, J**Bench:** Single Bench**Advocate:** Babu S. Nair, Seetha S**Final Decision:** Dismissed

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**Judgement**

Viju Abraham, J

1. This is an application for regular bail.

2. Petitioner is the accused in Crime No.4 of 2022 of Tirur Excise Range, Malappuram District registered alleging commission of offence punishable

under Section 20(b)(ii)B of NDPS Act.

3. The prosecution allegation is that, on 2.2.2022, at about 8.30 pm, the Excise Party were doing patrol duty in the Department vehicle, they found a

person carrying a plastic cover and in the presence of the witnesses, conducted the personal search of the person and recovered the contraband " " ,

2.100 Kgms of Ganja, and the accused committed the above said offence.

4. Petitioner submits that he is in custody from 2.2.2022 onwards, and that his further detention is not required for the purpose of investigation.

Petitioner has a specific case that the alleged seizure was in violation of Section 50 of the NDPS Act and there is no whisper in the mahazar that the

accused was even informed of his right to be searched in the presence of a Magistrate or a gazetted officer. Therefore, the entire proceedings are

vitiating by the non-compliance of the mandatory provisions contained in Section 50 of the NDPS Act. The learned counsel for the petitioner submits

that the petitioner is aged 70 and further that he is having various ailments and he had some breathing issues and intermittent bleeding from his nose

and he was admitted in the District Hospital, Perinthalmanna, as is evident from Annexure-B.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

6. Learned Public Prosecutor opposed the application for bail mainly contending that the petitioner is earlier involved in two other NDPS cases, one is

pending for trial and the other case was disposed of imposing a fine on the petitioner.

7. Considering the fact that the petitioner is in custody from 2.2.2022 onwards, I am inclined to grant bail to the petitioner, but taking note of the

serious objection raised by the Public Prosecutor, the same shall only be on stringent conditions:

(i) The petitioner shall execute bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like-sum to the satisfaction of the

jurisdictional court;

(ii) Petitioner shall appear on all posting dates before the trial court concerned without fail, except on specific exemption from the trial court;

(iii) The petitioner shall not attempt to interfere with the investigation or to influence any witness in Crime No. 4 of 2022 of Tirur Excise Range;

(iv) The petitioner shall not leave the State of Kerala without the permission of the jurisdictional Court.

(v) The petitioner shall not involve in any other crime while on bail.

If any of the aforesaid conditions are violated, the investigating officer in Crime No. 4 of 2022 of Tirur Excise Range may file an application before

the jurisdictional court, for cancellation of bail.