
Akbarsha @ Shan Vs State Of Kerala

Bail Application No. 8000 Of 2023

Court: High Court Of Kerala

Date of Decision: Sept. 20, 2023

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 â€” Section 20(b)(ii)C, 25, 37

Hon'ble Judges: Viju Abraham, J

Bench: Single Bench

Advocate: M.J.Santhosh, Renjith B.Marar, Arun Poomulli, Abhijith Sreekumar, Abhiram.S., Anand Remesh, Antony Paul, Renjit George

Final Decision: Dismissed

Judgement

Viju Abraham, J.

1. This is an application for regular bail.

2. Petitioner is the 1st accused in Crime No.10 of 2021 of Excise Enforcement & Anti Narcotic Special Squad, Thriuvananthapuram for the offence

punishable under Sections 20(b)(ii)C & 25 of NDPS Act.

3. The prosecution allegation is that on 23.10.2021, at 1.00 p.m, the 1st accused was found in possession of 55 kgs of ganja at Bismila Poultry Farm,

Manalimukku in Nellandadu Village and in furtherance of the criminal conspiracy hatched between accused 1 and 2, the 2nd accused took one sack of

ganja out of the four sacks of ganja kept at that poultry farm of the 1st accused for the purpose of sale, in contravention of the provisions of NDPS

Act and thus committed the above said offences.

4. The petitioner submits that he has been falsely implicated in the above said crime and is in custody from 23.10.2021 onwards, and that the trial of

the case has not yet started. Petitioner further submits that the 2nd accused was granted bail as per Annexure-A3 order, whereas the 3rd accused

was enlarged on bail as per the order in CrI.M.P.No.3026 of 2023 of Addl. Sessions Court, Thiruvananthapuram, as is evident from Annexure-A4

order. In the earlier bail application submitted by the petitioner in B.A.No.10150 of 2022 there was a direction to dispose of the case preferably within

an outer limit of 6 months. Petitioner submits that the trial has not yet commenced in spite of specific direction issued by this Court. Petitioner submits

that the long detention of the petitioner is a circumstance which would dilute the rigour of Section 37 of the NDPS Act and to substantiate the same

the petitioner would rely on the judgment in Dheeraj Kumar Shukla v. The State of Uttar Pradesh Special Leave Appeal (CrI.) No.6690/2022 and

the judgment in MD.Raja v. The State of West Bengal Special Leave Appeal (CrI.) No.3133/2022 (CrI.Appeal No.1293/2022).

5. The learned Public Prosecutor opposed the application for bail mainly contending that large quantity of contraband seized from the possession of

the petitioner, and the petitioner has an active role in the commission of the offence and further that the petitioner is involved,

in another crime, of similar nature, to which the learned counsel for the petitioner would submit that the offence

alleged in the said crime is possession of 40 grams of ganja and final report has already been filed in the said case. Petitioner further submits that he

is in custody from 23.10.2021 onwards and trial of the case is not yet commenced, and accused Nos.2 and 3 have already been granted bail.

Taking into consideration the long period of detention of the petitioner and further that the trial has not yet commenced, I am inclined to grant bail to

the petitioner but considering the seriousness of the allegation, the same shall only be on stringent conditions.

(i) Petitioner shall execute a bond for a sum of Rs.1,00,000/- (rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the

jurisdictional court;

(ii) Petitioner shall appear before the investigating officer in Crime No. 10 of 2021 of Excise Enforcement & Anti Narcotic Special Squad, Thiruvananthapuram

on all second Saturdays at 11.00 a.m. till completion of the trial;

(iii) Petitioner shall not leave the State of Kerala without obtaining prior permission from the jurisdictional court;

(iv) Petitioner shall surrender his passport before the jurisdictional court. If the petitioner does not have a passport, he shall execute an affidavit to that effect and

file the same before the said court within seven days of release on bail;

(v) Petitioner shall not attempt to interfere with the investigation or to influence any witness in the above said crime;

(vi) 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.10 of 2021 of Excise Enforcement & Anti Narcotic

Special Squad, Thiruvananthapuram may file an application before the jurisdictional court, for cancellation of bail.