

**(2024) 04 KL CK 0032****High Court Of Kerala****Case No:** Bail Application No. 1725 Of 2024

Muhammed Kutty

APPELLANT

Vs

State Of Kerala

RESPONDENT

**Date of Decision:** April 3, 2024**Acts Referred:**

- Code of Criminal Procedure, 1973 - Section 439
- Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 20(b)(ii)(B), 29

**Hon'ble Judges:** C.S.Dias, J**Bench:** Single Bench**Advocate:** R.Ranjith, Neema T V**Final Decision:** Allowed**Judgement**

C.S.Dias, J

- The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the third accused in Crime No.86/2024 of the Karipur Police Station, Malappuram, registered against the accused (three in number) for allegedly committing the offences punishable under Sections 20(b)(ii)(B) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'the Act'). The petitioner was arrested on 03.02.2024.
- The essence of the prosecution case is that; on 03.02.2024 at around 21.00 hours, the accused were found in possession of 2 kg of ganja. They were arrested then and there at the spot with the contraband article. Thus, the accused have committed the above offences.
- Heard Sri. R. Ranjith, the learned counsel appearing for the petitioner and Smt. Neema. T.V., the learned Senior Public Prosecutor appearing for the respondent.

4. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. He has been falsely implicated in the crime. The petitioner was not there at the place of the occurrence. The Investigating Officer has deliberately implicated the petitioner in the case. In any given case, the petitioner has been in judicial custody since 03.02.2024, the investigation in the case is complete, and recovery has been effected. Moreover, the contraband that has been allegedly seized from the accused is of an intermediate quantity. The petitioner's continued detention is unnecessary. Hence, the petitioner may be released on bail.

5. The learned Public Prosecutor opposed the application. She submitted that the investigation in the case is in progress. She also stated that the petitioner is an accused in Crime No.417/2023 of the very same police station for allegedly committing a similar offence. If the petitioner is released on bail, there is every likelihood of him committing a similar offence. Hence, the application may be dismissed.

6. On an anxious consideration of the facts, the rival submissions made across the Bar, and the materials placed on record, particularly taking note of the fact that the contraband that was seized from the accused is of an intermediate quantity, that the petitioner has been in judicial custody since 03.02.2024, which is 60 days, that the investigation in the case is practically complete, and that the recovery has been effected, I am of the definite view that the petitioner's further detention is unnecessary. Hence, I am inclined to allow the bail application.

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 Saturdays 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 him 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].