

(2024) 09 KL CK 0029

High Court Of Kerala

Case No: Bail Application No. 7492 Of 2024

Sabu @ Binu

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Sept. 23, 2024

Acts Referred:

- Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 483
- Kerala Abkari Act 1 of 1077 - Section 55(a), 56(b)

Hon'ble Judges: C.S.Dias, J

Bench: Single Bench

Advocate: Nireesh Mathew, Seetha.S

Final Decision: Allowed

Judgement

C.S.Dias, J

1. The application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS', for short), by the accused 1 and 2 in Crime No.145/2024 of the Thirvualla Excise Range Office, Pathanamthitta, which is registered against them for allegedly committing the offences punishable under Sections 56(b) and 55(a) of the Kerala Abkari Act,1 of 1077. The petitioners were arrested and remanded to judicial custody on 04.09.2024.

2. The gist of the prosecution case is that: on 04.09.2024, at around 21:15 hours, the accused were found in conscious possession of 20 litres of spirit which was stored in 4 cans of 5 litre each. The accused were arrested on the spot with the contraband article. Thus, the accused have committed the above offences.

3. Heard; Sri. Nireesh Mathew, the learned counsel appearing for the petitioners and Smt. Seetha S., the learned Senior Public Prosecutor.

4. The learned counsel for the petitioners submitted that the petitioners are totally innocent of the accusations levelled against them. They have been falsely implicated in the crime. The petitioners have been in judicial custody since 04.09.2024, the investigation in the case is practically complete and recovery has been effected. Moreover, the petitioners do not have any criminal antecedents. Hence, the petitioners may be released on bail.

5. The learned Public Prosecutor opposed the application. She submitted that the investigation is in progress. She also stated that if the petitioners are released on bail, they would commit similar offences. 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, especially on considering the fact that the petitioners have been in judicial custody since 04.09.2024, that the petitioners do not have any criminal antecedents, that the investigation in the case is practically complete and recovery has been effected, I am of the view that the petitioners' further detention is unnecessary. Hence, the petitioners are entitled to be released on bail.

In the result, the application is allowed, by directing the petitioners to be released on bail on them executing a bond for Rs.50,000/- (Rupees fifty thousand 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 petitioners 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. They shall also appear before the Investigating Officer as and when required;

(ii) The petitioners 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 them from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;

(iii) The petitioners shall not commit any offence while they are on bail;

(iv) The petitioners shall surrender their passports, if any, before the court below at the time of execution of the bond. If they have no passport, they 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 petitioners even while the petitioners are on bail as laid down by the Hon'ble Supreme Court in *Sushila Aggarwal v. State(NCT of Delhi) and Anr.* [2020 (1) KHC 663].