

Lakshman Patra Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 14, 2025

Acts Referred: Constitution of India, 1950 " Article 21

Bharatiya Nagarik Suraksha Samhita, 2023 " Section 483

Narcotic Drugs and Psychotropic Substances Act, 1985 " Section 20(b)(ii)C, 29, 37, 42

Hon'ble Judges: P.V.Kunhikrishnan, J

Bench: Single Bench

Advocate: Prabhu K.N., V.P.Sheela, Athul Soman Thekkedath, K.Pankajakshan, Vijay Kumar, Renjith George

Final Decision: Allowed

Judgement

P.V.Kunhikrishnan, J

1. These Bail application are filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita.

2. These bail applications are connected and therefore, I am disposing of these bail applications by a common order.

3. Petitioners are the accused in Crime No.665 of 2024 of Aroor Police Station. The above cases are registered against the petitioners and other

alleging offences punishable under Sections 20(b)(ii)C and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

4. The prosecution case is that on 18.06.2024 at 2:45 p.m., the accused were found in possession of 20.600 Kg of Ganja for the purpose of sale in 12

plastic covers kept in a trolley bag in a room on the first floor of Kaniyampuram House in Ward No.7 of Aroor Panchayat and were arrested from the

spot. Hence, it is alleged that accused committed the offence.

5. Heard Adv.Prabhu K.N, who argued B.A No.9131/2024, the counsel appearing in B.A No.9617/2024 and the Public Prosecutor.

6. Adv.Prabhu K.N, raised several contentions in this case. It is submitted that mandatory provisions of the NDPS Act is violated and therefore the

petitioners are entitled to bail. Adv.Prabhu K.N, also takes me through Annexure-A1 Inspection Memo and Arrest Memo. It is submitted that these

documents are admittedly prepared from the spot at the time of the alleged seizure. But, in these two documents the Crime Number is mentioned. The

counsel submitted that in the light of the dictum laid down in Jalaludeen A. v. State of Kerala [2024 (6) KHC 290], the entire seizure is doubtful. The

counsel also submitted that there is violation of Section 42 of the NDPS Act.

7. Public Prosecutor seriously opposed the bail application. The Public Prosecutor submitted that the offence alleged against the petitioners include the

offence under Section 20(b)(ii)C and the quantity seized is commercial quantity. Therefore the rigor under Section 37 of the NDPS Act is attracted.

The Public Prosecutor submitted that this Court may not grant bail at this stage.

8. This Court considered the contention of the petitioners and the Public Prosecutor. As far as violation of the mandatory provisions of the NDPS Act

concerned, I am not inclined to accept the contention of the petitioners at this stage. This is a bail application. This Court cannot consider whether

there is any violation of the mandatory provisions in a bail application. It is a matter of evidence. The prosecution can adduce evidence and the

defence also can adduce evidence and that is to be decided at the stage of trial at the appropriate time. Therefore, I am not inclined to accept the

contention of the petitioners as far as the violation of Section 42 of NDPS Act is concerned.

9. The next contention raised by Adv.Prabhu K.N., is that based on Annexure-A1 documents. Annexure-A1 is the Arrest Memo and the Inspection

Memo prepared by the Detecting Officer at the time of seizure. There cannot be any crime number when the case is detected. After detection and

preparation of seizure mahazer, Inspection Memo and Arrest Memo the case will be registered only when the officer concerned reached the police

station or excise range officer, wherever concerned.

10. This Court perused the Inspection Memo and Arrest Memo. In these documents the crime number is mentioned. In Jalaludeen's case (supra)

this point is considered. It will be better to extract the relevant portion of the above case.

24. In Santhosh S/o.Ayyappan v. State of Kerala, represented by Circle Inspector of Police, Munnar through Public Prosecutor, High Court of Kerala [2021 (5)

KHC 214], this Court had occasion to consider an arrest memo prepared at the spot of detection in an abkari case, in which crime number was seen recorded. The

court held that when crime number is found in a document, which was expected to be prepared at the spot of detection, the seizure of the contraband substance

comes under cloud, and it will create a doubt regarding the genesis of the prosecution case. Usually, a crime or occurrence report will be registered from the office

after the search, seizure, arrest etc. There was no chance for recording the crime number or OR number in a document which was supposed to be prepared at the spot

of search, seizure, arrest etc. If that document contains the crime number or OR number, it is a valid ground to doubt the genuineness of the search, seizure, arrest

etc.

This Court observed that in such situation, it is a valid ground to doubt the genuineness of the search seizure, arrest etc.

11. It is true that this Court is considering a bail application. The prosecution can adduce evidence regarding the reason how the crime number came

into the Inspection Memo and Arrest Memo at the time of trial. But, as on today the documents shows that the crime number is available in those

documents. This Court in Jalaludeen's case (supra) observed that in such cases, the genuineness of search seizure, arrest etc. is doubtful. In such

circumstances, I think the petitioners can be released on bail after imposing stringent conditions.

12. Moreover, the quantity seized from the petitioners is 20.600 Kg. It is just above the intermediate quantity. Considering the facts and circumstances

of the case, I think the petitioners can be released on bail after imposing stringent conditions. I make it clear that, if the petitioners are involved in

similar offence in future, the Investigating Officer is free to file appropriate application before the Jurisdictional Court to cancel the bail, and if such an

application is filed the Jurisdictional Court can pass appropriate orders, even though this bail order is passed by this Court. Counsel for the petitioners

submitted that the petitioners are ready to offer local sureties. The same is recorded. I make it clear that this is not an order from the Court and this is

a voluntary submission from the petitioners.

13. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in Chidambaram. P v

Directorate of Enforcement [2019 (16) SCALE 870], after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail

remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing

fair trial.

14. Moreover, in Jalaluddin Khan v. Union of India [2024 KHC 6431], the Hon'ble Supreme Court observed that:

"21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the

charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated.

When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very

serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a

settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds

good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out

for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights

guaranteed under Art.21 of our Constitution. (underline supplied)

15. In *Manish Sisodia v. Directorate of Enforcement* [2024 KHC 6426], also the Hon'ble Supreme Court observed that:

“53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well - settled principle of law that bail is

not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant

of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non - grant of bail even in straight forward open and

shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts

should recognize the principle that "bail is rule and jail is exception".

Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with

the following directions:

1. Petitioners shall be released on bail on 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 jurisdictional Court.

2. The submission of the petitioners that the local sureties will be furnished is recorded.

3. The petitioners shall appear before the Investigating Officer for interrogation as and when required. The petitioners shall co-operate with the investigation and

shall not, directly or indirectly make any inducement, threat or promise 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.

4. Petitioners shall not leave India without permission of the jurisdictional Court.

5. Petitioners shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are is suspected.

6. If any of the above conditions are violated by the petitioners, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by

this Court. The prosecution and the victim are at liberty to approach the jurisdictional court to cancel the bail, if there is any violation of the above conditions.