

**(2024) 12 KL CK 0087**

**High Court Of Kerala**

**Case No:** Bail Application Nos.8324, 8845, 7466 of 2024

Jithu S

APPELLANT

Vs

State Of Kerala

RESPONDENT

**Date of Decision:** Dec. 27, 2024

**Acts Referred:**

- Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 483
- Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 22(c), 27(A), 29, 37

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

**Bench:** Single Bench

**Advocate:** S.Sreekumar, Suraj Kumar R, Sunitha G, Anjana R S, P.S Appu

**Final Decision:** Dismissed

### Judgement

C.S.Dias, J

1. These applications are filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, by the accused 3, 4 and 5 in Crime No.1411/2023

of the Thampanoor Police Station, Thiruvananthapuram, which is registered against seven accused persons for allegedly committing the offences

punishable under Sections 22(c), 27(A) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The accused 3 to 5 were remanded to

judicial custody on 26.12.2023, 02.01.2024 and 09.01.2024, respectively.

2. B.A.No.8324/2024 is filed by the 3rd accused, B.A.No.8845/2024 is filed by the 4th accused and B.A.No.7466/2024 is filed by the 5th

accused. As the applications arise out of the same crime, they are consolidated, jointly heard and are being disposed of by this common order.

3. The concise case of the prosecution is that; on 12.12.2023, at 10:25 hrs., the 1st accused was found in conscious possession of 53.544 gms of MDMA. He was arrested on the spot with the contraband article. During the course of the investigation, it was revealed that the 1st accused had purchased the contraband article with the assistance of the accused 2 to 4, 6 and 7 and the financial support of the 5th accused. The 1st accused had used the mobile phone and the google pay account of the 4th accused for carrying out the transactions. Similarly, the 3rd accused had also paid money to the 1st accused to purchase the contraband article and the 7th accused had arranged the transportation for the accused 1 and 2 to travel from Kodaikanal to Bangalore. The accused 1 and 2 had travelled to Bangalore, after hatching a conspiracy with the accused 3 to 6, and purchased the contraband article. Thus, the accused have committed the above offences.

4. Heard; Sri.P.Anoop, Sri.T.K.Ananda Krishnan and Sri.Suraj Kumar R , the learned counsel appearing for the petitioners and Sri.P.S.Appu, the learned Public Prosecutor.

5. The learned counsel appearing for the 3rd accused argued that there is no material to substantiate the 3rd accused's involvement in the crime.

He has been implicated solely on the basis of suspicion. The contraband was seized from the conscious possession of the 1st accused. The 3rd accused has been implicated in the crime on the allegation that he had financially supported the 1st accused. Other than from a bald assertion made by the prosecution, there is no material to prove the said aspect. The 3rd accused is in judicial custody for the last one year.

6. The learned counsel appearing for the 5th accused submitted that the 5th accused has also been arraigned as an accused in the crime on the allegation that he had monetary transactions with the 1st accused. The prosecution has alleged that the 5th accused's wife (CW10) had transferred Rs.24,000/- to the bank account of the 1st accused. The investigation in the case is complete and the complaint (charge sheet) has been filed. The prosecution has only produced a bank statement to prove the financial transaction between the 5th accused's wife and the 1st accused.

The 5th accused's wife has not been made an accused in the crime. Therefore, by no stretch of imagination will the prosecution lie against the 5th

accused. The 5th accused is also in judicial custody for the last nearly one year. By order dated 25.06.2024 in B.A.No.4140/2024, the 7th accused has been enlarged on bail on the ground that there are no materials to link the 7th accused with the crime. The 5th accused claims parity with the 7th accused. There are reasonable grounds to hold that the 5th accused has not committed the above offences. The 5th accused also does not have any criminal antecedents. Hence, the application may be allowed.

7. The learned counsel for the 4th accused also contended that the 4th accused has been implicated in the crime on the ground of having financial transactions with the 1st accused and for giving his mobile phone to the 1st accused for making payments through his google pay account. The 4th accused is also in judicial custody for the last nearly one year. Hence, the application may be allowed.

8. The learned Public Prosecutor opposed all the three applications. The Investigating Officer has filed separate bail objection reports in the three bail applications. In the bail objection report filed in the application filed by the 3rd accused, it is contended that the 3rd accused had financially supported the 1st accused. Likewise, in the bail objection report filed in the application filed by the 5th accused, it is contended that Rs.24,000/- was transferred from the google pay account of the 5th accused's wife bank account to the bank account of the 1st accused. Whereas in the bail objection report filed in the bail application filed by the 4th accused, it is, inter alia, contended that the 4th accused is a person with criminal antecedents since he is involved in seven crimes, of which two crimes are registered against him for committing the offences under the NDPS Act. Moreover, at the time of arrest of the 1st accused, he was found in possession of the mobile phone and sim card bearing number 8714870286 which belongs to the 4th accused, and the google pay account that is used on the mobile phone is linked to the 4th accused's bank account bearing number 67302386619 of the SBI, Vettukad branch. There are several financial transactions between the accused 1 and 4. If the 4th accused is enlarged on bail, there is every likelihood of him committing a similar offence. Moreover, as the contraband involved in the case is of a commercial quantity, the rigour under Section 37 of the Act applies to the facts of the case. Therefore, the applications may be dismissed.

9. The prosecution allegation in the above crime is that, the 1st accused was found in conscious possession of 53.544 gms of MDMA. Indisputably, the investigation in the case is completed and the complaint has been filed. Now as per the chemical analysis report, it has turned out that the contraband is "Methamphetamine" and not "MDMA". Even then, the contraband involved in the case is of a commercial quantity.

Therefore, the rigour under Section 37 of the applies to the facts of the case.

10. As per the allegations in the complaint, the specific role of the 3rd accused is that he had financially assisted the 1st accused in procuring the contraband from Bangalore. Other than for a bare allegation in the complaint, there is no material to establish that the 3rd accused had made any financial assistance to the 1st accused. On the same lines, the allegation against the 5th accused is that his wife had transferred Rs.24,000/- to the 1st accused through google pay. The 5th accused's wife is not an accused in the crime. Instead, she is cited a prosecution witness, namely CW10.

The accused 3 and 5 also do not have any criminal antecedents.

11. It is well settled by the Hon'ble Supreme Court in Mohd. Muslim @ Hussain V. State (NCT of Delhi) [2023 KHC Online 6336] and by this

Court in Amal E & Anr V. State of Kerala [2023 Live Law (Ker) 329] that financial transactions alone cannot be taken as a criteria to implicate a

person as an accused in the crime under the NDPS Act. There should be cogent material to prove the culpability of an accused in the crime. There is

also no material to show that the accused 3 and 5 have any criminal antecedents.

12. On the contrary, there is a specific allegation attributed against the 4th accused. The prosecution alleges that mobile phone that seized from the

possession of the 1st accused belonged to the 4th accused. Also, the google pay account that was used on the mobile phone, was linked to the bank

account of the 4th accused. It was using the 4th accused's mobile phone and google pay account that the 1st accused has purchased the

contraband article. It is also undisputed that the 4th accused is involved in 7 other crimes, of which Crime Nos.1073/2022 and 138/2023 are registered

against the 4th accused by the Valiyathura Police Station, for committing the offences under the NDPS Act. Therefore, the 4th accused fails to also

qualify the second limb of Section 37 of the Act, in view of the categorical declaration of law by the Honâ€™ble Supreme Court in Dheeraj Kumar

Shukla v. The State of Uttar Pradesh [2023 KHC 6545].

13. On an anxious consideration of the facts, the rival submissions made across the Bar, and the materials placed on record, especially the fact that

there are no materials to substantiate the involvement of the accused 3 and 5 in the crime and that they have no criminal antecedents, I am satisfied

that there are reasonable grounds to hold that the accused 3 and 5 have not committed the offences and are not likely to commit the offences if they

are enlarged on bail. On the other hand, as there are incriminating materials to establish that the 4th accused is involved in the crime and he is a person

with criminal antecedents, I am not satisfied that the 4th accused has diluted the rigour under Section 37 of the Act.

In the result,

(1) B.A.No.8845/2024 filed by the 4th accused is dismissed.

(2) B.A.Nos.8324/2024 and 7466/2024 are allowed, by directing the accused 3 and 5 to be enlarged on a bail on them executing a

bond for Rs.50,000/- (Rupees Fifty thousand only) each with two solvent sureties each for the like sum, to the satisfaction of

the jurisdictional court, which shall be subject to the following conditions;

(i) The accused 3 and 5 shall appear before the jurisdictional court as and when directed;

(ii) The accused 3 and 5 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 accused 3 and 5 shall not commit any offence while they are bail;

(iv) The accused 3 and 5 shall surrender their passports, if any, before the jurisdictional court at the time of execution of the bond. If they have no

passports, they shall file affidavits to the effect before the jurisdictional court 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 jurisdictional court.