

Muhammed Rafeek Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 22, 2025

Acts Referred: Narcotic Drugs and Psychotropic Substances Act, 1985 " Section 22(c), 29, 37

Hon'ble Judges: Mohammed Nias C. P. , J

Bench: Single Bench

Advocate: K.Aboobacker Sidheeque, R.Mahesh Varma, Surya Binoy

Final Decision: Allowed

Judgement

Mohammed Nias C. P. , J

1. The petitioner is the seventh accused in Crime No. 117/2023 of Kollengode Police Station, Palakkad district, alleging offences punishable under

Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (The NDPS Act).

2. The prosecution case is that, accused Nos. 1 to 5 were found in possession of 88.880 grams of MDMA in a vehicle bearing registration No. KL 02

BC 8777 at a place called Valluvakundu on a public road, thereby, committing the above offence.

3. The learned counsel appearing for the petitioner and the learned Public Prosecutor were heard.

4. The learned counsel for the petitioner submits that he was not initially arrayed as an accused and it is only later, based on the confession of the co-

accused, that he was arrayed as an accused. The learned counsel submitted that there was no recovery effected from the petitioner and that, he hails

from Karnataka and comes to Palakkad only for his business. The petitioner has been in custody since 17.7.2023, and therefore his further detention is

not required and thus seeks bail.

5. The learned Public Prosecutor opposed the bail application and has filed a report in which it is stated that accused Nos.1 to 5 got the contraband

from accused No.7 and it is also stated that, in the investigation, the details of the call data records of the accused shows that first accused had called

the seventh accused several times on the date of the incident and also, on the following days. Based on a secret information that the accused was in

Bangalore, the police party went to Bangalore and picked him up on 15.7.2023 and he had also confessed to the crime while recording the confession.

The bank transaction details also showed the first accused sent money to the bank account of the seventh accused on the date of the incident and

also, on the following days. The bank transaction statement of the first accused containing the cash transaction information of the Kollam SBI Branch

was collected and when it was checked it was seen that some transactions were done not through the account of the seventh accused, but through the

account of his mother. The learned Public Prosecutor submits that there is enough involvement of the petitioner in the crime and that he should not be

enlarged on bail.

6. It is seen that the seizure was from accused Nos. 1 to 5. The first accused was granted bail by this Court as per Annexure A3 order dated

4.10.2024 in B.A.No. 1825/2024. The fifth accused was also granted bail by this Court as per Annexure A4 order dated 16.10.2024 in B.A.No.

8412/2024. It is seen that the petitioner was arrested on 17.7.2023 on the basis of the allegation of the prosecution that the contraband was purchased

from the seventh accused. Taking note of the fact that accused nos. 1 and 5, from whom seizure was effected, were granted bail by this Court

through Annexure A3 and Annexure A4 orders and that, the trial of the case has not even commenced, I am inclined to grant bail to the petitioner

diluting the conditions in Section 37 of the NDPS Act.

7. 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, one of whom should be either of the parents or a close relative, 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 every third Saturday between 9:00 am and 11:00 a.m. until the conclusion of the trial in

S.C.No.758/2023 before the Additional Sessions Court-V, Palakkad. 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 not leave India without the permission of the Court having jurisdiction and if having a passport, the petitioner shall surrender his

passport, before the trial court at the time of execution of the bond. If he has no passport, he shall file an affidavit to that effect before the trial 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. Application for deletion/modification of the bail conditions shall be filed and entertained before the trial court.