

Sarmananda Pradhan Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Feb. 4, 2025

Acts Referred: Narcotic Drugs and Psychotropic Substances Act, 1985 " Section 20(b)(ii)C, 27A, 29, 37

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

Bench: Single Bench

Advocate: Ajeesh M Ummer, Surya Binoy

Final Decision: Dismissed

Judgement

Mohammed Nias C.P., J.

1. This application is filed by accused 1 to 3 in crime No.380/2023 of Aluva East Police Station, Ernakulam, which was registered for the offences

punishable under Sections 20(b)(ii)(C), 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (the NDPS Act, for short).

2. The prosecution case is that, in furtherance of the conspiracy hatched by the accused persons, at about 8.20 a.m., on 22.04.2023, accused Nos.1 to

3 were found in possession of 28.800 kilograms of Ganja in three trolley bags and one shoulder bag and on seeing the police party, the fourth accused

escaped from the scene of occurrence near Aluva Railway Station in his vehicle bearing Registration No.KL-40 U 4751 THAR jeep, and thereby

committed the aforesaid offences. The petitioners were arrested on the same day, and they have been in judicial detention since then.

3. Heard the learned counsel appearing for the petitioners and the learned Public Prosecutor for the respondent.

4. The learned counsel for the petitioners submits that the petitioners are innocent of all the allegations. It is submitted that a lesser quantity of

contraband has been seized from them and the rigour under Section 37 of the NDPS Act will not be attracted.

5. The learned Public Prosecutor, opposes the prayer sought by the petitioners.

6. The earlier bail application of the 1st petitioner, B.A. No.8660/2023, was dismissed by this Court, by order dated 30.10.2023, taking note of the

prosecution case that accused 1 to 3 were found in possession of 28.800 kgs of ganja in three trolley bags and one shoulder bag. It was also noted that

the petitioners are not natives of Kerala and that the 8th and 9th accused are yet to be arrested. Further, the bail application of the 4th accused was

considered and dismissed by this Court by order dated 11.10.2023 in B.A. 7949/2023.

7. The learned counsel for the petitioners argues that the sampling, in the instant case, was done contrary to the provisions of the Narcotic Drugs &

Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, in particular Rules 3 and 10 thereof. It is argued that the contrabands

were mixed together and weighed only to make it appear as commercial quantity. It has to be straight away noticed that these contentions cannot be

considered at the stage of bail and can best be determined in the trial. The contentions of the petitioner in that regard are kept open.

8. As far as the grant of bail to the petitioners is concerned, as stated above, the earlier applications were rejected. There is absolutely no change in

circumstances to grant bail in the instant case, taking note of the rigour placed under Section 37 of the NDPS Act. It is also to be noticed that the

prosecution, in the instant case, alleged that the petitioners along with other accused conspired together to commit the offence and brought the

contraband from other States in commercial quantity. As held by the Hon'ble Supreme Court in the decision reported in Narcotics Control Bureau

v. Kashif [2024 KHC OnLine 6759], only after this Court considers the mandatory requirements under Section 37 which are to be strictly followed,

that a bail can be granted under the provisions of the NDPS Act. The provisions of the Act also should be interpreted keeping in mind the object,

purpose and impact of the society as a whole and has to be interpreted literally and not liberally to avoid frustrating its purpose. I do not find any merit

in the bail application. The same is accordingly dismissed.