

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 29<sup>TH</sup> DAY OF MARCH 2023 / 8TH CHAITHRA, 1945

BAIL APPL. NO. 2196 OF 2023

CRIME NO.302/2023 OF ERNAKULAM NORTH POLICE STATION

PETITIONERS/ACCUSED 1 & 2:

- 1 FARISH  
AGED 35 YEARS  
S/O MOITHEEN KUTTY, VYPIN PADATH, KODUNGALLUR, THRISSUR,  
PIN - 680664.
- 2 NISTHAFIR  
AGED 28 YEARS  
S/O UMMAR, VALAPPIN KAATIL HOUSE, KODUNGALLUR,  
THRISSUR, PIN - 680664.

BY ADV MANSOOR ALI

RESPONDENTS/STATE/COMPLAINANT:

- 1 STATE OF KERALA  
THROUGH PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031.
- 2 STATION HOUSE OFFICER, ERNAKULAM TOWN NORTH POLICE STATION  
ERNAKULAM NORTH, ERNAKULAM, PIN - 682031.

SENIOR PUBLIC PROSECUTOR SRI P G MANU

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 29.03.2023, THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING:

## **ORDER**

**Dated this the 29<sup>th</sup> day of March, 2023**

This is an application for regular bail filed by accused Nos. 1 and 2 in Crime No. 302 of 2023 of Ernakulam North police station, Ernakulam.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor. Perused detailed report of the Investigating Officer and relevant materials form part of the case diary, made available by the learned Public Prosecutor.

3. The prosecution allegation is that the 2<sup>nd</sup> accused occupied room No.38 in Olessia Hotel at 11 am on 11.02.2023. Then the 2<sup>nd</sup> accused along with the 1<sup>st</sup> accused stayed at the

room, and they jointly possessed intermediate quantity of MDMA to the tune of 3 grams and 3.03 grams of Hashish Oil in violation of the prohibitions contained in the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act', for short hereinafter). Accordingly, they were nabbed red-handedly and crime alleging commission of offences punishable under Sections 22(b), 20(b)(ii)(A) and 29 of the NDPS Act was registered and the same is on investigation.

4. While pressing for regular bail to the petitioners, it is submitted by the learned counsel appearing for the petitioners that the petitioners are innocent and the allegations are false. According to him, the investigation requiring the presence of the petitioners is practically over since they have been in custody from 11.02.2023 onwards. Therefore, the petitioners are liable to be released on bail. The learned counsel offered co-operation in the matter of investigation.

5. The learned Public Prosecutor opposed granting bail,

specifically on two grounds. Firstly, it is submitted that the investigation of a serious crime is at the premature stage and therefore, immediate release of the petitioners would hamper the investigation. Secondly, it is argued that the 2<sup>nd</sup> petitioner cannot be released on bail since this is the second crime alleged to be committed by him. It is also submitted that earlier Kodungallur police registered Crime No. 1344 of 2021 for the offence punishable under Section 22(c) of the NDPS Act when the 2<sup>nd</sup> petitioner was found in possession of commercial quantity of contraband. On getting released on bail in the said crime, the present crime was committed. It is also pointed out that the 1<sup>st</sup> petitioner also is having criminal antecedents and he had involved in Crime No. 276 of 2021 of Aluva West police station where the prosecution alleged commission of offences punishable under Sections 451, 427, and 34 of the IPC. Further, he has involvement in an earlier crime vide Crime No. 712 of 2007 for the offences punishable under Sections 294(b), 323, 341, and 34 of the IPC registered at the Kodungalloor

police station.

6. Since it is noticed that the 2<sup>nd</sup> petitioner got involved in this crime, after getting released in Crime No. 1344 of 2021 involving commercial quantity of narcotic substances, the 2<sup>nd</sup> petitioner cannot be released at this stage and therefore, the bail plea at the instance of the 2<sup>nd</sup> petitioner stands dismissed. However, the 1<sup>st</sup> petitioner can be enlarged on bail on conditions, even though he has criminal antecedents, taking note of the progress of the investigation and in consideration of the fact that he has involvement in minor offences.

Therefore, this petition stands allowed in part. The bail application filed by the 2<sup>nd</sup> accused is dismissed and the 1<sup>st</sup> petitioner/1<sup>st</sup> accused is enlarged on bail on conditions:-

- i. The 1<sup>st</sup> petitioner/1<sup>st</sup> accused shall be released on bail on his executing bond for Rs.50,000/- (Rupees Fifty Thousand Only) with two solvent sureties, each for the like amount to

the satisfaction of the Jurisdictional court concerned.

- ii. The 1<sup>st</sup> petitioner/1<sup>st</sup> accused shall not intimidate the witnesses or tamper with evidence. He shall co-operate with the investigation and shall be available for trial.
- iii. The 1<sup>st</sup> petitioner/1<sup>st</sup> accused shall appear before the Investigating Officer as and when directed, apart from appearing before the Investigating Officer on all Mondays between 9 am and 10 am, for a period of one month.
- iv. The 1<sup>st</sup> petitioner/1<sup>st</sup> accused shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of this case, so as to dissuade him from disclosing such facts to the court or to any police officer.
- v. The 1<sup>st</sup> petitioner/1<sup>st</sup> accused shall surrender

his passport, if any, within 7 days, from the date of his release, before the trial court. If he has no passport, he shall file an affidavit in this regard on the date of execution of the bond or within three days thereafter.

vi. The 1<sup>st</sup> petitioner/1<sup>st</sup> accused shall not involve in any other offence during the currency of bail and any such event, if reported, or came to the notice of this court, the same alone shall be a reason to cancel the bail hereby granted.

Sd/-

**A. BADHARUDEEN**  
**JUDGE**

RMV