

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 3RD DAY OF JUNE 2021 / 13TH JYAISHTA, 1943

BAIL APPL. NO. 3705 OF 2021

PETITIONER/ACCUSED :

MUHAMMED ASHARUDHEEN
AGED 26 YEARS
MUHAMMED ASHARUDHEEN SON OF MAMU AGED 26,
NUSRATH, THALANGARA, KASARGODE, KERALA
KASARGOD, PIN - 671122

BY ADVS.
SHERRY J. THOMAS
SRI. JOEMON ANTONY
SRI. RENISH RAVEENDRAN

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, PIN - 682031

BY ADV. SRI AJITH MURALI, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03.06.2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The above captioned application seeking regular bail is filed under Section 439 of the Code of Criminal Procedure ("Code" for short) by the accused in Crime No.188 of 2021 of the Kadavanthra Police Station registered under Sections 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The prosecution allegation is that on 10.4.2021 at about 9.30 p.m., the petitioner was found lurking in a suspicious manner near the Star Homes Annex, Kammattipadam. After complying with all the mandatory formalities, a search of his person was conducted and it is alleged that he was possessing 0.9785 grams of MDMA in clear violation of the provisions of the NDPS Act, 1985.

3. Sri.Sherry J. Thomas, the learned counsel appearing for the petitioner, while vociferously asserting that the petitioner herein is innocent of the allegations, points out that he was arrested on 10.4.2021 and has been languishing in custody since then. He would point out that the mandatory formalities as regards search and seizure were complied with more by its breach than by its compliance. It is contended that the quantity of contraband seized from the possession of the petitioner is just above the upper limit of small quantity. He would also assert that the petitioner is not a person with criminal antecedents. According to the learned counsel, any imprisonment before conviction has a substantial punitive content and which has time and again been disapproved by this Court as well as the Apex Court.

4. The learned Public Prosecutor has opposed the prayer and highlighted

the grave nature of the allegations.

5. I have considered the submissions advanced and have perused the materials which are made available.

6. From the materials made available it appears that the investigation in the instant case has progressed to the final stages. I take note of the quantity of contraband allegedly seized from the possession of the petitioner and also the fact that he is not a person with criminal antecedents.

Having considered all the relevant aspects, including the nature of accusations, the period of incarceration undergone, the severity of the punishment which conviction would entail, the reasonable possibility of securing his presence at the stage of trial, and other factors I am of the view that the petitioner can now be enlarged on bail by imposing appropriate conditions.

In the result, this application will stand allowed, however, it shall be subject to the following conditions:

1. The petitioner shall be released on bail on his 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 court having jurisdiction. One of the sureties shall be a near relative of the petitioner.
2. The petitioner shall appear before the Investigating Officer between 9 a.m. and 11 a.m. on every Saturday for a period of two months or until the filing of the final report whichever is earlier.
3. The petitioner shall not intimidate or attempt to influence the witnesses; nor shall he tamper with the evidence.
4. He shall not commit any offence while on bail.

5. He shall not leave the State of Kerala without the permission of Court having jurisdiction

In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with the law.

Sd/-

RAJA VIJAYARAGHAVAN V

JUDGE

Sru