

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 18TH DAY OF JUNE 2024 / 28TH JYAISHTA, 1946

BAIL APPL. NO. 3617 OF 2024

CRIME NO.433/2024 OF Manjeri Police Station, Malappuram

PETITIONER/ACCUSED No.1 (IN CUSTODY FROM 1.4.2024) :-

MUHAMMED MUBASHIR.P, AGED 22 YEARS
S/O ZUBAIR PATHIYIL, PATHIYIL HOUSE, ARICHOL,
PUTHUR P.O, KOTTAKKAL, MALAPPURAM DISTRICT,
PIN - 676 503

BY ADVS.
P.MOHAMED SABAH
LIBIN STANLEY
SAIPOOJA
SADIK ISMAYIL
R.GAYATHRI
M.MAHIN HAMZA
RAYEES P.
ALWIN JOSEPH
BENSON AMBROSE

RESPONDENT/STATE & COMPLAINANT :-

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031
 - 2 THE STATION HOUSE OFFICER,
MANJERI POLICE STATION, MANJERI,
MALAPPURAM DISTRICT, PIN - 676 121
- SMT.NEEMA T.V., SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
18.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 18th day of June, 2024

The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the first accused in Crime No.433/2024 of the Manjeri Police Station, Malappuram, which is registered against the accused, for allegedly committing the offences punishable under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The petitioner was arrested on 01.04.2024 .

2. The crux of the prosecution case is that; on 01.04.2024, at around 12.25 hrs., the accused were found in conscious possession of 10.35 gms of MDMA in a scooter bearing No.KL-55-X-4287. The accused were arrested on the spot with the contraband articles. Thus, the accused have committed the above offences.

3. Heard; Sri.P.Mohamed Sabah, the learned counsel appearing for the petitioner and Smt.Neema T.V.,

the learned Public Prosecutor appearing for the respondents.

4. The learned counsel appearing for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. There is no material to substantiate the petitioner's involvement in the case. The petitioner has been in judicial custody for the last two months, the investigation in the case is practically complete and recovery has been effected. Moreover, the petitioner has come to learn that the contraband involved in the case is Methamphetamine and not MDMA as alleged by the prosecution. Thus, the contraband involved in the case is of an intermediate quantity and the petitioner does not have any criminal antecedents. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the application. She submitted that the investigation is in progress. She also stated that if the petitioner is released

on bail, there is every likelihood of him committing a similar offence. Nonetheless, she handed over the Chemical Analysis Report of the Regional Chemical Examiners Laboratory, Kozhikode dated 24.05.2024 to substantiate that the contraband involved in the case is Methamphetamine and not MDMA. Therefore, the contraband involved in the case is of an intermediate quantity. She also did not dispute the fact that the petitioner does not have any criminal antecedents.

6. The prosecution was launched against the petitioner on the allegation that the accused were found in possession of 10.35 gms. of MDMA, which is of a commercial quantity. As per the Chemical Analysis Report referred to above, the contraband has turned out to be Methamphetamine, which is of an intermediate quantity. The petitioner does not have any criminal antecedents.

7. On an overall appreciation of the facts, the rival submissions made across the Bar and the materials placed

on record, especially considering the fact that the contraband involved in the case is of an intermediate quantity, the petitioner does not have any criminal antecedents, the petitioner has been in judicial custody for the last more than two months, the investigation in the case is complete and recovery has been effected, I am inclined to allow the application.

In the result, the application is allowed, by directing the petitioner to be released on bail on him 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, which shall be subject to the following conditions :-

- (i) The petitioner shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is laid. 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 them 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 surrender his passport, if any, before the court below at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the court below 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 court below.
- (vii) Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in **Sushila Aggarwal v. State (NCT of Delhi) and another** [2020 (1) KHC 663].

Sd/-
C.S. DIAS, JUDGE

Jvt/18.6.2024

APPENDIX OF BAIL APPL. 3617/2024

PETITIONER ANNEXURES :-

- Annexure 1** TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 433 OF 2024 OF MANJERI POLICE STATION, MALAPPURAM DISTRICT
- Annexure 2** TRUE COPY OF THE INTERIM ORDER DATED 12.04.2024 IN B.A. NO. 2158/2024 PASSED BY THE HONOURABLE HIGH COURT OF KERALA
- Annexure 3** TRUE COPY OF THE ORDER DATED 17.04.2024 IN CRL.M.P. NO. 396/2024 PASSED BY THE SPECIAL COURT FOR SC/ST (POA) ACT & NDPS ACTS CASES, MANJERI