

BAIL APPL. NO. 2776 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 13TH DAY OF JULY 2023 / 22ND ASHADHA, 1945

BAIL APPL. NO. 2776 OF 2023

CRIME NO.238/2023 OF VALANCHERY POLICE STATION, MALAPPURAM

PETITIONERS/ACCUSED NOS.6 & 7:

- 1 AMAL E, AGED 21 YEARS
S/O BALAN, ILAYAMKAVIL HOUSE, KOLOLAMBA .P.O,
PULLIKKAD, EDAPPAL, MALAPPURAM, PIN - 673637.

- 2 ABHILASH, AGED 21 YEARS
S/O SUNDARAN, ILAYAMKAVIL HOUSE, KOLOLAMBA P.O,
PULIKKAD, EDAPPAL, MALAPPURAM, PIN - 673637
BY ADVS.
BASIL CHANDY VAVACHAN
CHARUTHA BHAIJU
GEORGIE SIMON
CHANDHANA BHAIJU
BASIL SCARIA
BASIL SAJAN
FATHIM NAVAS

RESPONDENT/COMPLAINANT:

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

SRI.C.S.HRITHWIK, SR PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
13.07.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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ZIYAD RAHMAN, A.A, J

BA No.2776 of 2023

Dated this the 13th day of July, 2023

O R D E R

This is an application for Regular bail.

2. The petitioners are the accused Nos.6 and 7, in Crime No.238/2022 of Valancherry Police Station, Malappuram District. The said crime was registered for the offences punishable under Sections 22(c) and 29(1) of the NDPS Act

3. The prosecution case is that, on 01.05.2022 at 4 pm, the accused Nos.1 to 3, were found in possession of 163 grams of MDMA in a car bearing Registration No. KL-55 AA 8560. Immediately, they were arrested along with the contraband articles. During the course of the investigation, it was revealed that the accused No.4 transferred an amount of Rs.45,000/- to the 5th accused, Rs.35,000/- was transferred to one Muhammed Salim and Rs.45,000/- to one Mr Gautam Ramesh for the purchase of the MDMA. It was also revealed that the petitioners were also part of the transactions, and consequent to the same, the petitioners were arrested on 07.06.2022. Since then, they have been under judicial

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detention. This application for regular bail is submitted in such circumstances.

4. Heard Sri. Basil Chandy Vavachan, the learned counsel appearing for the petitioner and C.S.Hrithwik, the learned Senior Public Prosecutor appearing for the State.

5. The learned counsel for the petitioner submits that the petitioners are innocent of all the allegations.

6. On the other hand, the learned Public Prosecutor opposed the said application.

7. I have gone through the records. As the quantity involved is commercial, the rigour of section 37 of NDPS is attracted. However, the specific contention put forward by the learned counsel for the petitioners in this regard is that, there are no materials indicating the petitioner's involvement. It is pointed out that the petitioners were implicated as accused, only based on the confession statement of the 5th accused, in which there was specific reference therein about the monetary transactions that occurred through their accounts.

8. When examining the materials placed on record carefully, I find some force in the contention on behalf of the petitioners. It is evident that Rs.35,000/- was transferred by

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the 5th accused to the account of the 6th accused, who is the first petitioner herein. Similarly, CW19 transferred an amount of Rs.35,000/- to CW18. Out of the said amount, CW18 had transferred an amount of Rs.4000/ to the account of the 7th accused, as instructed by the 5th accused. From the perusal of the case records, it can be seen that, apart from the aforesaid transactions, there is nothing to show the involvement of the petitioners. It is true that the documents indicate the monetary transactions between the petitioners and some of the accused persons, but the question that arises is whether the said transactions were in connection with the sale of Narcotic drugs. To establish the same, apart from the confession statements of the accused, there is nothing. However, as it is an aspect to be established during the trial, I do not intend to enter into any finding at this stage, but the said aspect is sufficient to record the satisfaction of the conditions contemplated under section 37 of the NDPS Act, as the lack of such materials evokes a reasonable doubt as to the involvement of the petitioner. It is also to be noted in this regard that none of the petitioners has any criminal antecedents. It is also relevant that the petitioners have been

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in custody since 07.02.2022. The trial of the case is not likely to take place in the near future as well. In such circumstances, it is only proper that the petitioners be released on bail on stringent conditions.

Accordingly, this application is allowed, and the petitioners are directed to be released on bail subject to the following conditions:-

i) The petitioners shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One Lakh only) each with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

ii) The petitioners shall appear before the Investigating Officer as and when required.

iii) The petitioners shall not commit any offence of similar nature while on bail.

iv) The petitioners shall not make any attempt to contact any of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.

v) The petitioners shall not leave India without the

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permission of the jurisdictional court.

vi) The petitioners shall surrender their passport before the Jurisdictional court, and if they do not have a passport, an affidavit to that effect shall be filed.

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

Sd/- ZIYAD RAHMAN, A.A, JUDGE

R.AV