

**HIGH COURT OF KERALA****Bench: Justice A. Badharudeen****Date of Decision: 19 October 2023**

BAIL APPL. NO. 9028 OF 2023

SC 330/2023 OF IV ADDITIONAL SESSIONS COURT, THRISSUR

CRIME NO.911/2022 OF PUDUKKAD POLICE STATION, THRISSUR  
DISTRICT**SATHEESAN                      ..... PETITIONER/ACCUSED****Versus****STATE OF KERALA                      ..... RESPONDENT/COMPLAINANT****Section, Acts, Rules, and Articles:**

Section 20(b)(ii) C, 37, 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)

**Subject:** Regular bail - Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), specifically Section 20(b)(ii) C - accused was arrested with a significant quantity of Ganja, and the legality of the search conducted between sunset and sunrise was in question - parameters for granting bail in NDPS cases.**Headnotes:**

*Bail Application – Second application for regular bail – Petitioner accused of committing an offence under Section 20(b)(ii)C of the Narcotic Drugs and Psychotropic Substances Act, 1985 – Allegation of transporting contraband – Arrested with a significant quantity of Ganja – Search conducted between sunset and sunrise – Compliance of 2nd proviso to Section 42 of the NDPS Act in question – Petitioner a first-time offender – One year in custody – Trial not materialized within six months – Parameters for bail in NDPS cases discussed – Petitioner granted bail on specified conditions. [Para 1-9]*

**Referred Cases:**

Fasil v. State of Kerala [2023 (3) KHC 212]

**Representing Advocates:**

Adv. Nireesh Mathew for the petitioner/accused

Sr. Public Prosecutor Sri. K. Denny Devassy for the respondent/complainant

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ORDER**Dated this the 19<sup>th</sup> day of October, 2023

This is the second application for regular bail, filed by the petitioner, who is the sole accused in Crime No.911/2022 of Pudukkad Police Station, Thrissur District, where he alleged to have committed offence punishable under Section 20(b)(ii)C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act' hereinafter).

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor.

3. I have perused the relevant documents form part of the case diary produced by the learned Public Prosecutor and the report of the Investigating Officer.

4. The prosecution allegation is that, at about 3:31 hrs.on 11.10.2022, based on a secret information received to the effect that, the accused was transporting contraband in a car, bearing registration No.KL-08/N-4843, after recording the said information in the general diary in writing, the Sub Inspector and party stood at the relevant place and intercepted the car. When the driver of the car was questioned, he had given inconsistent answers and thereafter, he was personally searched, after complying Section 50 of the NDPS Act and thereby, 21.05 Kgs of Ganja was seized. Accordingly, crime was registered alleging commission of the above offence and the accused has been in custody from 11.10.2022 onwards.

5. While pressing for grant of regular bail to the petitioner, who was nabbed along with commercial quantity of contraband, with a view to dilute or to satisfy the conditions provided under Section 37 of the NDPS Act, the learned counsel for the petitioner raised specific contention that, in this case, the search was in between sunset and sunrise and therefore, there should be materials at the instance of the prosecution to see compliance of 2<sup>nd</sup> proviso to Section 42 of the NDPS

Act to show that the detecting officer recorded grounds for his belief under the proviso thereto, for search of the conveyance between sunset and sunrise. The learned counsel for the petitioner also submitted that, eventhough the bail application of the petitioner was dismissed as per Annexure 3 order in B.A.No.1197/2023, dated 22.3.2023, now, the petitioner has completed one year more in custody and he is a first time offender. He also pointed out that, so far, the Chemical Analysis Report not obtained and therefore, trial also could not be materialised within a period of 6 months. He further submitted that, in this matter, there is violation of compliance of 2<sup>nd</sup> proviso to Section 42(1) of the NDPS Act.

6. The learned Public Prosecutor opposed bail, highlighting the reasons stated in Annexure 3 and also pointing out the fact that, since the contraband is commercial in quantity, the petitioner could not be released on bail. The learned Public Prosecutor also conceded that the petitioner is a first time offender. The ratio in **Fasil v. State of Kerala** [2023 (3) KHC 212] is not disputed by the learned Public Prosecutor, since the accused completed his custody for one year. The learned Public Prosecutor further submitted that, the petitioner has no criminal antecedents and the trial in this case could not be materialised within a period of 6 months. Therefore, the ratio in **Fasil's** case (supra), would squarely apply to the facts of this case.

7. In **Fasil's** case (supra), this Court held as under:

*“Epitomizing the parameters laid down by the Apex Court in the decisions herein above discussed, the following parameters clubbed together can be considered to dilute the rigour under Section 37 of the NDPS Act: (1) the accused should not have any criminal antecedents. (2) the accused has been in custody for a long time, at least a period more than one year (say for eg. about fourteen months in the instant case). (3) the impossibility of trial within a reasonable time (for this purpose, the Court granting bail should ensure that trial could not be completed at least within a period of six months). Yet another aspect to be added in the list, in my view, is the quantity of the*

*contraband. That is to say, when the quantity of contraband is something just above the intermediate quantity and the same is not a huge or sizable quantity, the same also can be considered after satisfying the above 3 parameters stated herein above, for diluting the rigour under Section 37 of the NDPS Act.”*

8. To be on the crux of the matter, since the petitioner has been in custody from 11.10.2022 and he is a person having no criminal antecedents and the trial could not be materialised, applying the ratio in **Fasil's** case (supra), the petitioner can be enlarged on bail.

9. Therefore, this bail application stands allowed. The petitioner is enlarged on bail on the following conditions:

i. The petitioner 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 Special court concerned.

ii. The petitioner shall not intimidate the witnesses or tamper with evidence. He shall co-operate with the trial and shall be available for trial.

iii. The petitioner 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.

iv. The petitioner shall surrender his passport before the Special Court on the date of execution of the bail bond or within ten days therefrom, with special permission of the Special Court. If the petitioner has no passport, he shall file an affidavit to that effect, instead of surrendering passport, within the stipulated time.

v. The petitioner shall not involve in any other offence during the currency of bail and any such event, if reported or came to the notice

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of this Court, the same shall be a reason to cancel the bail hereby granted.

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