

HIGH COURT OF KERALA

BENCH: THE HONOURABLE MR. JUSTICE C.S. DIAS

DATE OF DECISION: 1st April 2024

BAIL APPLICATION NO. 1950 OF 2024

CRIME NO. 204/2024 OF KONDOTTY POLICE STATION,
MALAPPURAM

MUHAMMED MUSTHAFA

Versus

STATE OF KERALA

Legislation and Rules:

Section 439 of the Code of Criminal Procedure, 1973

Section 22(c), 37 of the Narcotic Drugs and Psychotropic
Substances Act, 1985 ('the Act')

Subject: Bail application in a case involving the possession of
36.740 grams of Methamphetamine, initially alleged as MDMA,
for the purpose of sale.

Headnotes:

Bail Application - Grant of Bail – Narcotic Drugs and Psychotropic
Substances Act, 1985(NDPS) – Petitioner accused of
possession of 36.740 grams of Methamphetamine, initially
believed to be MDMA – Chemical analysis report confirmed
substance as Methamphetamine, classified as intermediate
quantity – Petitioner has no criminal antecedents – Held,
considering the completion of investigation, lack of criminal
history, and change in the nature of the substance, further
detention of petitioner is deemed unnecessary – Bail granted
subject to specific conditions including execution of Rs.1,00,000
bond, regular appearance before Investigating Officer, non-
interference with witnesses or evidence, and surrender of
passport. [Paras 1-7]

Conditions for Bail – Detailed Analysis – Bail conditions include appearance before Investigating Officer, prohibition against tampering with evidence or influencing witnesses, commitment to not commit any offence while on bail, surrendering of passport, and provision for modification of bail conditions – Violation of conditions may lead to cancellation of bail. [Paras 7 (i)-(vii)]

Decision – Grant of Bail to Petitioner – Court allows the bail application of the petitioner, Muhammed Musthafa, in view of the changed classification of the confiscated substance and absence of criminal history, subject to adherence to the prescribed conditions. [Para 7]

Referred Cases:

- Sushila Aggarwal v. State (NCT of Delhi) and another [2020 (1) KHC 663]

Representing Advocates:

P.C. Muhammed Noushiq for Petitioner

Sr PP Sri C S Hrithwik for Respondent

ORDER

The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the sole accused in Crime No.204/2024 of the Kondotty Police Station, Malappuram, registered against the accused for allegedly committing the offence punishable under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'the Act'). The petitioner was arrested on 2.2.2024.

2. The essence of the prosecution case, is that: on 2.2.2024, at around 21.15 hours, the accused was found in possession of 36.740 grams of MDMA for the purpose of sale. Thus, the accused has committed the above offence.

3. Heard; Sri. P.C Muhammed Noushiq, the learned counsel appearing for the petitioner and Sri.C.S. Hrithwik, the learned Senior Public Prosecutor.

4. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusation levelled against him. A reading of the occurrence report would show that the petitioner is not involved in the case. The petitioner has learnt that the contraband is not MDMA, but only Methamphetamine. Therefore, the contraband is of an intermediate quantity. The petitioner does not have criminal antecedents. He has been in judicial custody since 2.2.2024, which is nearly 60 days, the investigation in the case is practically complete and recovery has been effected. Therefore, the petitioner's further detention is unnecessary. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the application. He submitted that the investigation is in progress. Nonetheless, he conceded to the fact that as per the chemical analysis report dated 27.3.2024 issued by the Regional Forensic Science Laboratory, Thrissur, it has turned out that the contraband is Methamphetamine and not MDMA. Moreover, the petitioner does not have criminal antecedents.

6. The prosecution was lodged against the petitioner on the accusation that he was found in possession of 36.740 grams of MDMA. It has now turned out that the contraband is Methamphetamine and not MDMA. Therefore, the contraband is of an intermediate quantity. It is also to be noted that the petitioner does not have criminal antecedents.

7. On an anxious consideration of the facts, the rival submissions made across the Bar, and the materials placed on record, especially the chemical analysis report dated 27.3.2024 issued by the Regional Forensic Science Laboratory, Thrissur, which shows that the contraband is Methamphetamine and not MDMA. Therefore, the contraband is of an intermediate quantity. Indisputably, the petitioner does not have any criminal antecedents, the investigation in the case is practically complete and recovery has been effected. Hence, I am of the definite view that the petitioner's further detention is unnecessary. Thus, I am inclined to allow the bail application.

In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.1,00,000/- (Rupees One lakh 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 alternate Saturdays between 9 a.m. and 11 a.m for a period of three months or till the final report is filed, whichever is earlier. 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 him 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 they are 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]**.

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