

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

THURSDAY, THE 22ND DAY OF APRIL 2021 / 2ND VAISAKHA, 1943

Bail Appl..No.1463 OF 2021

CRIME NO.521/2019 OF Panniankara Police Station , Kozhikode

PETITIONER/S:

SAHARATH V.P
AGED 43 YEARS
S/O. MUHAMMED KOYA
VALIYAKAM PARAMB HOUSE,
KALLAYI (PO), KOZHIKODE DISTRICT
673003

BY ADV. SRI.P.V.ANOOP

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA
682031

OTHER PRESENT:

SR.PP- SRI.SANTHOSH PETER

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
3.3.2021, THE COURT ON 22.04.2021 PASSED THE FOLLOWING:

O R D E R

Dated this the 22nd day of April 2021

Successive application for regular bail under Section 439
Cr.P.C.

2. The applicant is the accused in Crime No.521/2019 of Panniyankara Police station, Kozhikkode for having allegedly committed an offence punishable under Section 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act for short). The investigation is over and the final report has already been filed and taken on file of the Court of the Special Judge for NDPS case, Vadakara as S.C. 41/2020.

3. The prosecution case, in brief, is that on 07/12/2019 at about 11:40 AM, the Police officers apprehended the

accused near the goods shed yard of the Kallai Railway Station under suspicious circumstances, and on search he was found to be in possession of 2830 capsules weighing 1750 grams of Spasmo Proxyvon containing Tramadol, a commercial quantity of a psychotropic substance, violating the provisions of the NDPS Act. He was remanded consequent to his arrest and continues in judicial custody. The applicant had filed an application for statutory bail under Section 167 (2) Cr.P.C read with Section 36A(4) of the NDPS Act as Crl. M.P No.275/2020 before the Designated Court and the same was dismissed vide Annexure-2 Order. The final report in an NDPS case has to be filed within the statutory period of 180 days. There is no dispute that the final report in the instant case was filed on

16/03/2020 as evident from Annexure-1. The applicant would contend that the final report which was filed on time by the investigating officer, was returned for the reason that the copy of the drug disposal committee was not attached. subsequently, it was filed only after the expiry of the statutory period and hence the applicant ought to have been given the benefit of mandatory bail under Section 167 (2) Cr.P.C., read with Section 36A(4) of the NDPS Act. The applicant states that the Apex Court has in *Achpal@ Ramswaroop & Ano v. State of Rajasthan, [AIR 2018 Sc 4647:2018 KHC 6714]* held that when a charge filed before the court within the statutory time under Section 167(2) CrP.C is returned due to technical defects, it cannot be said charge sheet is filed, and that the accused is

entitled for statutory bail after expiry of ninety days if no charge sheet is filed within that period. The applicant also relies on the decisions in *Udhay Mohanlal Acharya v. State of Maharashtra [2001 (5) SCC 453]* and *M. Raveendran v. The Intelligence Officer, Directorate of Revenue Intelligence [Crl.Appeal No. 699 of 2020]* to submit that the accused may be released on bail.

4. Heard Shri P.V. Anoop, the learned counsel appearing for the applicant and Shri Santhosh Peter, the learned Senior Public Prosecutor. Records perused.

5. The applicant had raised all these contentions earlier and this court had vide Order dated 21-10-2020 found that there were no reasons to hold that the final report was not

filed within time. The copy of the Drug Disposal Committee was not seen handed over to the accused. Hence, the prosecution was directed by the jurisdictional court to cure that defect. This Court had relied upon the decision of the Supreme Court in *Central Bureau of Investigation v. R. S. Pai and Another*, [2002 (2) KLT 149 (SC) : 2002 (5) SCC 82], and the decision of this Court in *Shino Paul and Others v. State of Kerala* [2010 (1) KLT 339], wherein it was held that if a mistake is committed in not producing the relevant documents at the time of submitting the report or the charge – sheet, it is always open to the investigating officer to produce the same with the permission of the Court. In the case on hand, the charge – sheet was returned as defective. It implies permission to cure

the defects. The defects were cured and the charge-sheet was re-presented. It cannot be said that the proviso to Section 167(2) Cr.PC would get attracted, and the accused to get default bail if the charge - sheet is re-presented, after curing the defects, beyond the period in the said proviso, when the charge-sheet was originally filed within time. Regarding the application of the embargo under Section 37 of the NDPS Act, this Court had referred to the judgment of the Hon'ble Supreme Court reported in *Union of India (UOI) v. Shri Shiv Shanker Kesari [KHC 5675: 2007 (7) SCC 798]* and the application for bail was dismissed.

6. An accused has right to make successive applications for grant of bail. But, the Court entertaining such subsequent

bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the Court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications (See *Kalyan Chandra Sarkar v. Rajesh Ranjan*, [2004 KHC 754 : AIR 2004 SC 1866]).

7. In *Kalyan Chandra Sarkar v. Pappu Yadav*, [2005 KHC 604 : AIR 2005 SC 921], the Supreme Court has held thus:

"Even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a

subsequent application."

8. In *Achpal's* case (*Supra*), the question that arose was different. There, the investigation was completed and Challan under S.173 was filed on 05/07/2018. However, just two days before that, an order had been passed by the High Court recording submission of the public prosecutor that investigation in the matter would be conducted by a Gazetted Police Officer. The investigation which led to the filing of the report on 05/07/2018, was not in conformity with the statement made before the High Court. It was for this reason that the papers were returned by the Magistrate. In the case in hand, the Charge-sheet was returned for the purpose of supplying a copy of the report of the Drug Disposal

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Committee.

I find no reason to reconsider the earlier Order of this Court. Hence the application is dismissed. The jurisdictional Court is directed to expedite disposal of the case.

Sd/-

ASHOK MENON

JUDGE

jg