

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

Bail Appl..No. 5379 of 2015

CRIME NO.O.R.1/2004 OF NCB/RIU/THIRUVANANTHAPURAM

PETITIONER(S)/A3:

**M.A.K.ASIF, AGED 52 YEARS,
IOB CHOICE HEIGHTS, BAINS COMPOUND, NANTHENCOD,
THIRUVANANTHAPURAM (UNDER CUSTODY).**

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR

RESPONDENT(S)/COMPLAINANT:

**THE INTELLIGENCE OFFICER,
NARCOTIC CONTROL BUREAU, REGIONAL INTELLIGENCE UNIT,
THIRUVANANTHAPURAM,
REPRESENTED BY THE STANDING COUNSEL FOR NCB,
HIGH COURT OF KERALA, ERNAKULAM682031.**

BY ADV. SRI.MVS.NAMBOOTHIRY

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29-09-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

A.HARIPRASAD, J.

B.A.No.5379 of 2015

Dated this the 29th day of September, 2015

ORDER

Application filed under Section 439 of the Code of Criminal Procedure.

2. Petitioner is the accused in Crime No.OR.1 of 2014 of NCB/RIU/Thiruvananthapuram. The matter is now pending in SC.No.187 of 2015 before the Additional Sessions Court-V, Thiruvananthapuram.

3. The prosecution case is that on 23.04.2004 at about 06.30 hours on getting a specific information the Intelligence Officer, NCB, RIU, Thiruvananthapuram went to the airport and made the detection. Prosecution further contended that a consignment of approximately 200 grams of heroine, a narcotic drug, packed in about 40 numbers of bullet shaped capsules were carried by the 1st accused. Prosecution further contended that 160 grams of heroine was recovered from A1. When 1st accused was questioned, he revealed the complicity of A2 and A3 in the crime. Accordingly, the petitioner was arrested. He

was released on bail earlier. But he absconded and stayed away from the court for more than 10 years.

4. Learned Special Public Prosecutor for NCB strongly opposed the bail application.

5. Heard both sides.

6. Learned counsel for the petitioner submitted that the co-accused in the case had been tried and Annexure-A judgment will show that A1 was convicted only under Section 27 of the NDPS Act and imposed by a sentence of three months. A2 was acquitted. It is also contended that no recovery of contraband was effected from the petitioner. That apart, the petitioner is having renal failure and one of his Kidneys is functionless. He is in custody from 04.07.2015 onwards. According to the learned counsel for the petitioner, he had undergone detention for more than six months as an undertrial prisoner in this case. Considering the fact that the first accused was convicted and sentenced only for a period of three months, he petitioner cannot be further detained in custody contended the counsel.

7. Learned Special Public Prosecutor opposed the bail application mainly contending that the accused without any justification stayed away from justice and the case could not be tried only for his absence. That apart he relied on Section 37 of the NDPS Act. On a reading of Section 37 of the Act, it can be seen that it applies only to commercial quantity of the contraband articles under the Act. The quantity allegedly recovered from the possession of the first accused can only be treated as an intermediate quantity.

8. Reckoning the entire facts and circumstances and also considering the observations made by a learned Single Judge of this Court in B.A.No.4954 of 2015, following order is passed.

- (a) The petitioner shall be released on bail on his executing a bond for ₹1,00,000/- (Rupees One Lakhs Only) with two solvent sureties for the like sum to the satisfaction of the learned Trial Judge.
- (b) The sureties shall produce documents to

establish their identity and solvency. The learned Sessions Judge need not insist on solvency certificate, but other documents can also be perused to find out whether the sureties are solvent or not.

- (c) Mother or sister of the accused shall be an additional surety.
- (d) The petitioner shall surrender his passport forthwith. If he does not possess a passport, he shall file an affidavit to that effect.
- (e) The petitioner shall report before the SHO, Fort Police Station, Thiruvananthapuram on all Sundays between 09.00 a.m and 10.00 a.m. until the final report is filed.
- (f) The petitioner shall not leave the Thiruvananthapuram District without permission of the Trial Judge.
- (g) The petitioner shall not intimidate or attempt to influence the witnesses.
- (h) Petitioner shall not, during the period of this

bail get involved in any offence.

In case any of the above conditions is violated, bail granted hereby is liable to be cancelled for which the investigating officer may move application before the jurisdictional magistrate.

Sd/-

A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. to Judge

A.HARIPRASAD, J.

B.A.No.5379 of 2015

Dated this the 10th day of September, 2015

ORDER

Heard the learned counsel for the petitioner and learned Special Public Prosecutor for Narcotic Control Bureau.

2. Petitioner is the 3rd accused in S.C.No.878 of 2015 on the file of the Additional Sessions Court-V, Thiruvananthapuram. He is involved in offences punishable under Sections 8(c) r/w Section 21(b), 27(A), 28 and 29 of the NDPS Act, 1985.

3. Learned counsel for the petitioner submitted that the accused is a Kidney patient and he is languishing in jail from 04.07.2015 onwards.

4. Learned Special Public Prosecutor opposed the bail application contending that this Court as per order

dated 20.08.2015 in B.A.No.4854 of 2015 refused bail to the petitioner and allowed him to raise a plea for discharge if, he so chooses.

5. In view of this order, it is contended by the learned Special Public Prosecutor that the petitioner is not entitled to seek bail. Per contra, learned counsel for the petitioner submitted that first accused had been tried and convicted for possessing a small quantity of Heroine and dealt with under Section 27 of the NDPS, Act. Second accused was acquitted.

Considering all these aspects, I am of the view that the petitioner shall be permitted to file an application for discharge before the trial court and the learned trial Judge shall expeditiously dispose of the application on merits within a period of 'seven days' from the date of filing. Considering Ext.C1 report as well.

Post this bail application after two weeks.

A.HARIPRASAD, JUDGE.