IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 17TH DAY OF JANUARY 2024 / 27TH POUSHA, 1945

BAIL APPL. NO. 10858 OF 2023

CRIME NO.111/2023 OF Palakkad Excise Range Office, Palakkad

PETITIONER/S:

MUHAMMAD RASOOL,
AGED 29 YEARS
S/O. JAFAR ALI, FLAT NO : CA / 2C, SURYA CENTRAL APARTMENTS, G.B ROAD, PALAKKAD, KERALA, PIN - 678001

BY ADV NIFFIN P. KAREEM

RESPONDENT/S:

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

2 EXCISE INSPECTOR
EXCISE RANGE OFFICE, PALAKKAD, EXCISE TOWER, KUNATHURMEDU, PALAKKAD, KERALA., PIN - 678001

OTHER PRESENT:

SR PP SRI C S HRITHWIK

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O R D E R

The application is filed under Section 439 of the Code of Criminal Procedure, 1973 by the sole accused in Crime No.111/2023 of the Palakkad Excise Range Office, Palakkad registered against the accused for allegedly committing the offences punishable under Sections 22(c) and 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, "Act"). The petitioner was arrested on 12.10.2023.

2. The gist of the prosecution case is that: on 12.10.2023 at about 3.35 p.m., the Detecting Officer found 110 grams of methamphetamine from the body of the accused. Subsequently, in the search conducted by them in a flat taken on lease by the accused, 5.5 kilograms of ganja was also recovered. Thus, the accused has committed the above offences.

3. Heard; Sri.Niffin P.Kareem, the learned counsel appearing for the petitioner and C.S.Hrithwik, the learned Public Prosecutor.

4. The learned counsel appearing for the petitioner submitted that the petitioner is totally innocent of the accusations leveled against him. The petitioner was residing with his family in a flat bearing No.CA-2C in Surya Central Apartments, GB Road, Palakkad. The contraband article was seized from the flat No.CA-5E, wherein the petitioner's staff were residing. There was no recovery made from the body of the petitioner. There is nothing to connect the petitioner with the above crime. The petitioner has no criminal antecedents. The petitioner has been in judicial custody since 12.10.2023, which is more than three months. The investigation in the case is almost complete. The contraband article alleged to be methamphetamine is not a contraband substance. The petitioner is willing to cooperate with the investigation. Hence, the petitioner may be released on bail.

5. The learned Public Prosecutor opposed the application. He contended that 110 grams of methamphetamine was seized from the body of the petitioner and 5.5 kilograms of ganja was seized from the

flat, which was taken on lease by the petitioner. There were several transactions between the petitioner and one Tomcy who hails from Bangalore. The said person is also an accused. The investigation is only at the nascent stage. The materials on record clearly substantiates that the petitioner has committed the above offences. In view of the rigour under Section 37 of the Act the application is only to be dismissed.

6. The prosecution allegation is that the Detecting Officer recovered 110 grams of methamphetamine from the body of the petitioner, which is commercial quantity. It is further alleged that 5.5 kilograms of ganja was seized from the apartment which was taken on lease by the petitioner. It is also alleged that there are several transactions to prove that the petitioner had transferred money from his bank account to a person in Bangalore, from who he had purchased the contraband article. The investigation is only in progress.

7. Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, regulates the grant of bail in cases

involving offences under the Act. It is profitable to extract Section 37, which reads as follows:

> *"37.* ***Offences to be cognizable and non-bailable****.—(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974),—*
> *(a) every offence punishable under this Act shall be cognizable;*
> *(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—*
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*
> *(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Criminal Procedure Code, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."*

8. A plain reading of the above provision demonstrates that a person accused of an offence under Sections 19, 24 and 27-A of the Act and also involving commercial quantity shall not be released on bail unless the court is satisfied that there are reasonable grounds to believe that the accused is not guilty and is not likely to commit any offence while on bail. Therefore, the power to grant bail to a person accused of committing an offence under the Act is subject to provisions contained under

Sec.439 of the Code and parameters referred to above and on the accused satisfying the twin conditions under Sec.37 of the Act.

9. While interpreting 'reasonable grounds' prescribed under Section 37 of the Act, the Honourable Supreme Court in ***Union of India v. Shiv Shanker Kesari*** *[(2007) 7 SCC 798]* held as follows:

> *"7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged".*

10. In ***Union of India v. Mohd. Nawaz Khan*** *[(2021) 10 SCC 100]*, the Honourable Supreme Court, after referring to a host of judicial precedents on Section 37 of the Act, observed that:

> *"23. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed".*

11. It is also well-settled that in addition to applying the rigour under Section 37 of the Act, the courts are also bound to follow the general parameters under Section 439 of the Code, while considering a bail application.

12. The accusations leveled against the petitioner and as rightly observed by the learned Sessions Judge, Palakkad, the contentions raised by the petitioner are all disputed questions which are to be considered at the time of trial.

On a meticulous scrutiny of the factual matrix, the law referred to above, and taking into account the prosecution allegation which is grave and serious in nature and the potential severity of the punishment that can be imposed on the petitioner in the event of him being found guilty and further the contraband article allegedly seized from the possession of the petitioner is of commercial quantity, I am at this stage not satisfied that there are no reasonable grounds to believe that the petitioner is not guilty of the offence alleged against him

and that he is not likely to commit a similar offence, if enlarged on bail, so as to dilute the rigour under Sec.37 of the Act. The learned Sessions Judge has rightly observed that the question regarding the ownership of the apartment etc., is a question of evidence, which has to be decided at the time of trial. The application is meritless and is only liable to be dismissed.

Resultantly, the application is dismissed.

Sd/-

C.S.DIAS
JUDGE

rkc/17.01.24

APPENDIX OF BAIL APPL. 10858/2023

PETITIONER ANNEXURES

Annexure A1	COPY OF CRIME AND OCCURRENCE REPORT
Annexure A2	THE ORDER OF SESSION COURT IS PRODUCED