2024:KER:60237

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE C.S.DIAS
THURSDAY, THE 8TH DAY OF AUGUST 2024 / 17TH SRAVANA, 1946
BAIL APPL. NO. 3690 OF 2024
CRIME NO.227/2024 OF Cherpu Police Station, Thrissur

PETITIONER/S:

BRIJITHA,
AGED 25 YEARS
D/O BABU, PUNNACHANDU (H), NENMARA VILLAGE,
KOTHAKULAM ROAD DESOM, CHITTUR TALUK, THRISSUR
DISTRICT., PIN - 678508

BY ADVS.
MITHUN BABY JOHN
N.U.HARIKRISHNA

RESPONDENT/S:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA, PIN – 682031
SR.PP.SRI.C.S.HRITHWIK

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08.08.2024, ALONG WITH Bail Appl..5317/2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE C.S.DIAS
THURSDAY, THE 8TH DAY OF AUGUST 2024 / 17TH SRAVANA, 1946
BAIL APPL. NO. 5317 OF 2024
CRIME NO.227/2024 OF Cherpu Police Station, Thrissur

PETITIONER/S:

SHIVAS,
AGED 29 YEARS
S/O SAJEEVAN, NELLIKKATHARA (H), KAIPAMANGALAM VILLAGE & P.O, KODUNGALLUR TALUK, THRISSUR DISTRICT., PIN - 680681

BY ADVS.
N.U.HARIKRISHNA
MITHUN BABY JOHN

RESPONDENT/S:

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

SR.PP.SMT.PUSHPALATHA

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08.08.2024, ALONG WITH Bail Appl..3690/2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.S.DIAS,J

Bail Application Nos.3690 & 5317 of 2024

Dated this the 8th day of August, 2024

COMMON ORDER

The applications are filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Code') by the accused 1 and 2 in Crime No.227/2024 of the Cherpu Police station, Thrissur, which is registered against them for allegedly committing the offence punishable under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'the Act'). The petitioners were arrested on 21.02.2024. B.A.No.5317/2024 is filed by the 1st accused and B.A.No.3690/2024 is filed by the 2nd accused. As the applications arise out of the same crime, they are consolidated, jointly heard, and disposed of by this common order.

2. The crux of the prosecution case, is that: on 21.02.2024, at around 11.20 hours, the first accused was found in conscious possession of 19.22 grams of MDMA

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and the second accused was found in conscious possession of 4.07 grams of MDMA, while they were traveling on a motorcycle. The vehicle was intercepted and the contraband was seized from the conscious possession of the accused. Thus, the accused have committed the above offences.

3. Heard; Sri.Mithun Baby John, the learned counsel appearing for the petitioners and Sri.C.S.Hrithwik and Smt.Pushpalahta, the learned Senior Public Prosecutors.

4. The learned counsel for the petitioners submitted that the petitioners are innocent of the accusations leveled against them. They have been falsely implicated in the crime. There is no material to substantiate that the petitioners have committed the above offences. When B.A.No.3690/2024 came up for consideration on 27.05.2024, this Court directed the Investigating Officer to produce the chemical analysis report, since the 2nd accused had contended that the contraband involved in the case is not 'MDMA'. As the

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Investigating Officer had failed to produce the chemical analysis report, by orders dated 05.06.2024 and 09.07.2024 in B.A.Nos.3690/2024 and 5317/2024, respectively, this Court enlarged the accused 2 and 1 on interim bail. Now as per the chemical analysis report, it has turned out that the contraband involved in the case is 'methamphetamine' and not 'MDMA'. Therefore, the contraband is of an intermediate quantity. Therefore, the rigour under Section 37 of the Act does not apply to the facts of the case. The petitioners have been in judicial custody for the last six months, the investigation in the case is complete and the final report has been laid. Hence, the applications may be allowed.

5. The learned Public Prosecutors opposed the applications. They submitted that if the petitioners are released on bail, there is every likelihood of them committing a similar offence. The 1st accused is involved in 12 other crimes. If the 1st accused is enlarged on bail, there is every likelihood of him committing a similar offence. Hence, the applications may be dismissed.



Nonetheless, they made available the chemical analysis report dated 18.07.2024 issued by the Regional Forensic Science Laboratory, Thrissur, which establishes that the contraband involved in the case is 'methamphetamine' and not 'MDMA' as alleged by the prosecution.

6. The prosecution was launched against the petitioners on the principle allegation that they were found in conscious possession of 23.29 grams of MDMA, which is of a commercial quantity. Since the chemical analysis report was not produced within the stipulated time period as per Rule 14 of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022 and the law laid down by this Court in ***Anuraj vs. State of Kerala*** *[2024 KHC Online 399]*, this Court had enlarged the 2nd accused on interim bail as per the order dated 05.06.2024 and the 1st accused on interim bail as per the order dated 09.07.2024.

7. On an overall consideration of the facts, rival submissions made across the Bar, and the materials

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placed on record, particularly taking note of the chemical analysis report referred to above which shows that the contraband is 'methamphetamine' and is, therefore, of an intermediate quantity, the petitioners were in judicial custody and subsequently enlarged on interim bail as referred to above, the investigation in the case is complete and the final report has been laid, I am of the view that the bail applications have to be allowed by making the interim orders dated 05.06.2024 and 09.07.2024 absolute.

In the result, the applications are allowed by making the interim orders dated 05.06.2024 and 09.07.2024 in B.A.Nos.3690/2024 and 5317/2024 absolute. The petitioners are directed to comply with the directions in the above mentioned interim orders.

Sd/-

C.S.DIAS,JUDGE

rkc/08.08.24

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APPENDIX OF BAIL APPL. 5317/2024

PETITIONER ANNEXURES

Annexure A1	**TRUE COPY OF THE ORDER DATED 15/3/2024 IN CRL.M.P 2036/2024 ON THE FILES OF THE HONOURABLE SESSIONS JUDGE COURT, THRISSUR**
Annexure A2	**TRUE COPY OF THE ORDER DATED 17/5/2024 IN CRL.M.P 3412/2024 ON THE FILES OF THE HONOURABLE SESSIONS JUDGE COURT, THRISSUR**

APPENDIX OF BAIL APPL. 3690/2024

PETITIONER ANNEXURES

Annexure A1	**TRUE COPY OF THE ORDER DATED 18/4/2024 IN CRL.M.P 2471/2024 ON THE FILES OF THE HONOURABLE SESSIONS JUDGE COURT, THRISSUR**