IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 5TH DAY OF AUGUST 2024 / 14TH SRAVANA, 1946

BAIL APPL. NO. 5708 OF 2024
CRIME NO.1859/2023 OF PERINTHALMANNA POLICE STATION, MALAPPURAM

PETITIONER:

MANZOOR FEBIN,
AGED 37 YEARS
S/O. NASAR,KALLIVALAPPIL HOUSE,
THELAKKADU P.O., MALAPPURAM,
PIN - 679325

BY ADVS. ENOCH DAVID SIMON JOEL
S.SREEDEV
RONY JOSE
LEO LUKOSE
KAROL MATHEWS SEBASTIAN ALENCHERRY
DERICK MATHAI SAJI
KARAN SCARIA ABRAHAM

RESPONDENT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM
THROUGH THE S.H.O.,
PERINTHALMANNA POLICE STATION,
MALAPPURAM), PIN - 682031

OTHER PRESENT:

SR PP SRI C S HRITHWIK

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Dated this the 5th day of August, 2024

O R D E R

This is the second application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, by the second accused in Crime No.1859/2023 of the Perinthalmanna Police Station, Malappuram, which is registered against the accused, for allegedly committing the offences punishable under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985*(in short, 'NDPS Act')*. The petitioner was arrested and remanded to judicial custody on 23.12.2023.

2. The crux of the prosecution case is that; on 23.12.2023 at around 13.40 hours, the accused 1 and 2 were found in conscious possession of 105.6 gms of MDMA in a car bearing registration No.KL 53/P 3493. The accused were arrested on the spot with contraband articles. Thus, the accused have committed

the above offences.

3. Heard; Sri.S. Sreedev, the learned counsel appearing for the petitioner and Smt. Seetha S., the learned Senior Public Prosecutor.

4. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations leveled against him. The change of circumstances to file the application is that the Investigating Officer has filed the final report on 20.07.2024. Furthermore, the petitioner was only a passenger in the car, which was left idle. The petitioner has been in judicial custody since 12.12.2023. The investigation in the case is complete, and the final report has been laid. Therefore, the petitioner's further detention is unnecessary. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the application. She submitted that there is no change of

circumstances subsequent to the filing of the final report. She also submitted that, in view of the law laid down by the Hon'ble Supreme Court in ***Narcotics Control Bureau v. Mohit Aggarwal*** [2022 KHC Online 6720], merely filing of the final report is not a change of circumstance. The contraband involved in the case is of a commercial quantity. Therefore, the rigour under Section 37 of the NDPS Act applies to the facts of the case. Hence, the application may be dismissed.

6. The prosecution allegation against the accused is that they were found in possession of 105.6 gms of MDMA and were arrested on the spot with the contraband articles. Indisputably, the contraband involved in the case is of a commercial quantity. Therefore, the rigour under Section 37 of the NDPS Act applies.

7. The trump card of the petitioner is that since

the final report has been laid, the change of circumstances. Hence, the petitioner may be enlarged on bail.

7. The Honourable Supreme Court in ***Mohit Aggarwal***'s case, has categorically held that merely because the final report is laid, the same cannot be treated as a ground to enlarge a petitioner on bail.

In view of the elaborate findings rendered by this Court in Annexure-A3 order and the law laid down in ***Mohit Aggarwal***'s case, I hold that there is no change of circumstances to enlarge the petitioner on bail.

Resultantly, the application is dismissed.

Sd/-

C.S.DIAS,JUDGE

DST/05.08.24

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P.A. To Judge