



2025:KER:15357

BAIL APPL. NO. 2181 OF 2025

1

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 20<sup>TH</sup> DAY OF FEBRUARY 2025 /1ST PHALGUNA, 1946

BAIL APPL. NO. 2181 OF 2025

CRIME NO.1236/2023 OF Adimaly Police Station, Idukki

PETITIONER/2ND ACCUSED:

ANZAR AZEEZ  
AGED 30 YEARS  
S/O.AZEEZ, NOOLUVELIL HOUSE,  
10TH MILE, VALARA, MANNAMKANDAM VILLAGE,  
IDUKKI DISTRICT,, PIN - 685561

BY ADV M.S.BREEZ

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 STATION HOUSE OFFICER  
ADIMALI POLICE STATION OF IDUKKI DISTRICT,  
PIN - 685561

SRI HRITHWIK CS, SR PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
20.02.2025, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



BAIL APPL. NO. 2181 OF 2025

2

**C.R.****P.V.KUNHIKRISHNAN, J.****B.A. No.2181 of 2025****Dated this the 20<sup>th</sup> day of February, 2025****ORDER**

This Bail Application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita. If a lawyer argues a bail application by adverting to the merit of the case and insists for an order on merit, and if the court observes that, prima facie there is a case, whether the same is binding on the investigating authority or the trial court, is the question to be decided in this case.

2. Petitioner is the 2<sup>nd</sup> accused in Crime No.1236/2023 of Adimali Police Station. The above case is charge-sheeted against the petitioner alleging offences punishable under Sections 20(b)(ii)B, 22(c) and 29 of the



Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

3. The prosecution case is that, on 6.10.2023 at 2.15 pm, with the knowledge of accused Nos.2 and 3, accused No.1 transported 5.125 kgs of ganja and 78.91 gms of Methamphetamine Hydro Chloride in a car bearing registration No. KL-63/B-9639 along Korangatty-Pettimudi road in Korangatty Kara of Mannamkandam Village. The allegation against the petitioner is that he handed over 5.125 kgs of dried ganja to accused No.1. There is an allegation that all three accused hatched a criminal conspiracy for illicit traffic of ganja and Methamphetamine. Accused No.2 was arrested and produced before the court on 07.01.2024 and remanded to judicial custody.

4. Heard Adv. M.S. Breez, the learned counsel appearing for the petitioner and the learned Public Prosecutor.



5. Adv. M.S. Breez argued the matter in detail. The counsel took me through the documents produced by the prosecution and submitted that this is a case in which there is no iota of evidence against the petitioner. Therefore, it is submitted that the petitioner is entitled to bail. Adv. M.S. Breez submitted that no contraband was seized from the petitioner. He is implicated as an accused mainly based on some call records and the confession statement of the 1<sup>st</sup> accused. The counsel submitted that the confession statement of the co-accused is not admissible. Simply because the petitioner had contacted the 1<sup>st</sup> accused, that itself is not a reason to implicate him in a case like this. The counsel submitted that the bar under Section 37 of the NDPS Act is not applicable in the facts and circumstances of this case.

6. The Public Prosecutor seriously opposed the bail application and submitted that the petitioner was actively involved in this case and the offences alleged include the



offence under Section 22(c) of the NDPS Act and hence Section 37 of the NDPS Act is attracted. Therefore, it is submitted that the petitioner is not entitled to bail.

7. This Court considered the contentions of the petitioner and the Public Prosecutor. The petitioner earlier filed a bail application before this Court. This Court considered almost all the contentions raised by the petitioner and dismissed that bail application as per Annexure-A3 order. Annexure-A3 order was passed on 09.01.2025. Thereafter the present bail application is filed on 12.02.2025. There is no bar in filing a second bail application if there is a change of circumstances. But, when this Court passed a detailed order as evident by Annexure-A3, and when there is no change of circumstances, prima facie, I am of the opinion that this bail application need not be entertained. If there is a change of circumstances, the accused can file any number of bail applications. But if there is no change of



circumstances after passing a bail order, the court need not entertain a further bail application.

8. Even then, Adv. M.S. Breez forcefully argued the matter again. The main contention of the petitioner is that, no contraband is seized from the petitioner and the petitioner, who is the 2<sup>nd</sup> accused is implicated based on some telephonic conversations with the 1<sup>st</sup> accused. The counsel submitted that the same is not admissible as evidence. The offences alleged against the petitioner include the offence under Section 29 of the NDPS Act. Section 29 of the NDPS Act reads as follows:

**29. Punishment for abetment and criminal conspiracy.**

(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code



(45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which-

- (a) would constitute an offence if committed within India; or
- (b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India."

9. A perusal of the same would show that an accused can be prosecuted even if no contraband is seized from him, provided there is evidence to show that there is abetment and criminal conspiracy. In other words, the Section would show that the actual possession of the contraband is not necessary to convict a person for



the offences under the NDPS Act. If abetment and criminal conspiracy are proved, the accused can be convicted.

10. In this case, there is a telephonic conversation between the 1<sup>st</sup> accused and the petitioner. The prosecution alleges that there is a conspiracy between accused Nos.1 and 2. When such a case is put up by the prosecution, this Court cannot observe that there is no prima facie case against the petitioner, while considering a bail application. It is a matter of evidence. A bail court need not consider the admissibility of the call details produced by the prosecution to prove conspiracy and abetment in all cases. The bail court should consider whether there are reasonable grounds for believing that the accused is not guilty of such offence. For that purpose, the bail court can consider whether there is a prima facie case. Section 37 of the NDPS Act says that, no person accused of an offence punishable for offences





under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and 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. Therefore, a prima facie opinion is to be formed by the court while deciding a bail application in NDPS Act cases.

11. Not only in NDPS cases but in any bail application, if the counsel for the accused raises a legal point or a point on merit, the bail Court cannot reject the same, saying that it will amount to a finding of prima facie case at the bail application stage. A finding of a prima facie case at the bail application stage is not binding to the trial court at the time of final disposal of



that case. It is not binding to the Investigating Officer for further investigation to collect materials in addition to the materials collected already. Therefore, simply because a prima facie opinion is arrived at by the bail court while deciding a bail application, it is not binding on the trial court at the time of the final hearing, nor it is binding on the Investigating Officer, debarring the collection of further evidence.

12. As I mentioned earlier, when a question of law or a point on merit is raised by the accused in a bail application, it is the duty of the bail court to decide that point. But that decision will be a prima facie finding at the bail application stage. The bail court court can not neglect such points raised in a bail application, by merely stating that if those questions are decided prima facie, it will affect the investigation and the trial. As I mentioned earlier, the prima facie finding in a bail application is not binding to the trial court or to the Investigating Agency



for collecting further evidence. But when a point is raised by an accused in a bail matter, the court is bound to consider it. Bail court cannot escape from dealing with that contention by observing that, it amounts to a “prima facie finding” in a bail application, which will be used by the accused or the prosecution, as the case may be. I make it clear that, no court shall rely on a “prima facie finding” by the bail court, while deciding the main case finally. Similarly, the investigating agency shall not stop the investigation, because there is a prima facie finding that, no offence is made out. Investigating officer can proceed with the case, untrammelled by the observation of the bail court.

13. The Apex Court in **Rohit Bishnoi v. State of Rajasthan** [2023 KHC 6732] observed like this:

“21. The Latin maxim “cessante ratione legis cessat ipsa lex” meaning “reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself,” is also



apposite.

22. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail, courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing on the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While considering an application for grant of bail, a prima-facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis à vis the offence/s alleged against an accused."

14. The above observation of the Apex Court strengthens the point that, a prima facie finding on a point raised in a bail application is necessary and it should be supported by reason also. But it is not binding to the



BAIL APPL. NO. 2181 OF 2025

13

Investigating Officer for collecting further evidence, nor it is binding to the court concerned for deciding the matter.

15. Coming back to the facts of the case, I am of the considered opinion that a prima facie case is made out by the prosecution. If that is the case, this Court is not in a position to entertain this bail application. But I make it clear that these findings are only for the purpose of deciding this bail application and this is not binding to the trial court and the trial court is bound to dispose of the main case untrammelled by any observations in this order.

With the above observation, this bail application is dismissed.

Sd/-

**P.V.KUNHIKRISHNAN**  
**JUDGE**

DM/JV