



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 19TH DAY OF DECEMBER 2023 / 28TH AGRAHAYANA,
1945

CRL.MC NO. 10909 OF 2023

CRIME NO.08/2020 OF Peerumedu Excise Range Office, Idukki
AGAINST THE ORDER IN CRMC 183/2023 OF SPECIAL COURT (NDPS
ACT CASES), THODUPUZHA

PETITIONER/ACCUSED:

ABEDUR SHEKH, AGED 36 YEARS
MIZGAO, PARANPUR VILLAGE, MALDA DISTRICT. WEST
BENGAL., PIN - 732204
BY ADVS.
P.SREEKUMAR
HELEN P.A.
STEPHANIE SHARON
ATHUL ROY
NITHIN ANTONY JOSE

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY EXCISE INSPECTOR,
EXCISE RANGE OFFICE, PEERMADE THROUGH THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,
KOCHI, PIN - 682031

SRI M P PRASANTH, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 19.12.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:



‘CR’

P. V. KUNHIKRISHNAN, J.**Crl.M.C.No.10909 of 2023****Dated this the 19th day of December, 2023****ORDER**

The short point to be decided in this case is that, while imposing a condition in a bail order whether the Court can insist that sureties who have to execute the bond shall be from a particular district alone or from a particular State alone. This point is not *res integra*. The Apex Court and this Court consistently observed that, such conditions shall not be imposed while granting bail. Even then, some of the courts are imposing such conditions.

2. In this case, the petitioner is the accused in Crime No.8/2020 of Excise Range Office, Peerumedu, Idukki. The case is registered alleging offences punishable under sections 20(b)(ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [for short, ‘the Act’]. Now the case is pending as S.C(NDPS).No.52/2023 before the Special Judge for NDPS Act cases, Thodupuzha. The petitioner is a person who belongs to



West Bengal.

3. The petitioner was released on bail as per order dated 16.07.2020 in Crl.M.C.No.52/2020 on an earlier occasion. Thereafter, when the petitioner was absent, his bail bond was forfeited and the case was transferred to the register of long pending cases. Subsequently, the presence of the accused was procured on 24.07.2023 and hence the long pending case was re-opened and the accused was remanded to judicial custody. Thereafter, the learned Special Judge as per order dated 07.09.2023 ordered release of the petitioner on executing a fresh bail bond for Rs.2 lakh with two solvent sureties each for the like sum. It is also stated in the order that, one of the sureties shall be from the district of Idukki and the sureties shall produce original title deeds for verification. Aggrieved by the conditions insisting that the sureties should be from the District of Idukki itself and also by the amount of the bail bond to be executed, this Crl.M.C is filed.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

5. The famous writer Pydimarri Venkata Subba Rao composed a National Pledge in Telugu in 1962 while he was



-serving as the District Treasury Officer of Vishakhapatnam District of Andhra Pradesh. Later, the same was translated to other regional languages also. In 1964, the Central Advisory Board of Education at Bangalore, under the Chairmanship of M.C. Chagla issued direction that the National Pledge be read in schools. Thereafter, the National Pledge is recited in the morning assembly of most Indian schools. It starts like this:

‘India is my country. All Indians are my brothers and sisters.’

6. India is a country consisting of several States with different languages. But, from our childhood, it is a pledge we have all taken to the effect that we are all brothers and sisters. There is no Keralite alone or Bengali alone or Kannadiga alone or Tamilian alone. All are brothers and sisters. The Apex Court in ***Moti Ram and Ors. v. State of Madhya Pradesh [AIR 1978 SC 1594]*** observed like this:

“31. It shocks one's conscience to ask a mason like the petitioner to furnish sureties for Rs. 10,000/-. The magistrate must be given the benefit of doubt for not fully appreciating that our Constitution, enacted by “We, the People of India”, is meant for



the butcher, the baker and the candle-stick maker- shall we add, the bonded labour and pavement dweller.

32. To add insult to injury, the magistrate has demanded sureties from his own district; (We assume the allegation in the petition). What is a Malayalee, Kannadiga, Tamilian or Andhra to do if arrested for alleged misappropriation or theft or criminal trespass in Bastar, Port Blair, Pahalgam or Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a morcha. Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non- regional language applications? What law prescribes the geographical discrimination implicit in asking for sureties from the court district? This tendency takes many forms, sometimes geographic, sometimes linguistic, sometimes legalistic. Article 14 protects all Indians qua Indians, within the territory of India. Article 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies that even a vakalat or affirmation made in any State language according to the law in that State



must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own home-land. Swaraj is made of united stuff.”

7. Similarly, this Court considered the same issue in ***Subho Adhikari v. State of Kerala [2018(4) KLT 778]***. It will be better to extract the relevant portion:

“3. The learned Magistrate has directed that the sureties of the petitioner shall be Keralites and they shall produce their title deeds. This is illegal. The court cannot make a distinction between Keralites and people of other States. The direction that the sureties shall produce their title deeds cannot be said to be unreasonable. If the learned Magistrate is satisfied that the sureties have properties, their title deeds shall be returned to them. Coming to the second condition, the direction of the learned Magistrate to the sureties that they shall provide a shelter to the accused in Ernakulam till the completion of the trial is without jurisdiction and it is illegal. It is liable to



be set aside. The third condition is that the petitioner shall not leave the limits of Ernakulam Town North Police Station without prior permission of the learned Magistrate. The petitioner has come to Kerala from West Bengal in search of a job. It is submitted that the direction will disable to him from doing any work outside the limits of the Ernakulam Town North Police Station. Having regard to this fact, I am inclined to direct that it is sufficient that the petitioner appears before the investigating officer every Friday between 4 and 5 P.M. till the final report is filed or for six months, whichever is earlier.”

8. From the above dictum laid down by the Apex Court and this Court it is clear that, the Court cannot insist that the surety should be from a particular area alone. If a Keralite unfortunately became an accused in West Bengal, he would find it extremely difficult to get a surety at West Bengal as he is not a resident of that State. He can produce a surety from his native place where his kith and kin are residing. Similar is the case if a native of West Bengal becomes accused of an offence in Kerala. All are citizens of this country. The sureties are executing the bond to produce the accused as and when required. It cannot be insisted



that the sureties residing within the jurisdiction of the Court should execute a bond in all situations. That will be an easy method, but it is unmindful of the fact that we are all Indians. The apprehension of the court below may be because, if the sureties produced by the petitioner are from other States, it is difficult to issue notice to them and get the presence of the accused if the accused absconds. The same can be avoided by getting the details, including the address, phone number and the local police station where he is residing. Hence, I am of the considered opinion that the insistence to produce the surety for release of the petitioner, who belonged to West Bengal, from Idukki district itself cannot be justified. The counsel for the petitioner also submitted that the bond of Rs.2,00,000/- is too high because the value of property in Idukki district and the value of property at West Bengal are different and the value of property at Idukki is much higher than the value of the property at the places from where the petitioner can produce the sureties. I think that this grievance of the petitioner can also be redressed. Therefore, the conditions imposed in the last two paragraphs of Annexure-A1 can be modified.



Therefore, this Crl.M.C is allowed in the following manner:

The condition imposed by the Special Judge, NDPS Act cases, Thodupuzha in Crl.M.C.183/2023 in S.C (NDPS). No.52/2023 is deleted and modified in the following manner:

a) The accused shall be released on bail on executing a fresh bail bond for Rs.50,000/- [Rupees Fifty Thousand Only] with two fresh solvent sureties each for the like sum.

b) The petitioner is free to produce the sureties from his native place but the petitioner shall produce the identity proof of the sureties like Voters id card, Aadhar card etc.

c) The sureties of the petitioner shall file an affidavit attested by a Notary Public narrating their place of residence, the jurisdictional police station with full communication address and also phone number.

Sd/-

**P. V. KUNHIKRISHNAN
JUDGE**

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APPENDIX OF CRL.MC 10909/2023

PETITIONER ANNEXURES

Annexure A1 CERTIFIED COPY OF THE ORDER IN CRL M C
NO 183 OF 2023 IN SC (NDPS) 52 OF 2023
PENDING BEFORE THE SPECIAL JUDGE FOR
NDPS ACT CASES, THODUPUZHA