

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 1<sup>ST</sup> DAY OF APRIL 2022 / 11TH CHAITHRA, 1944

BAIL APPL. NO. 2046 OF 2022

CRIME NO.2 OF 2021 OF EXCISE RANGE OFFICE, NEYYATTINKARA,  
THIRUVANANTHAPURAM.

PETITIONER/2ND ACCUSED :

RAHIM, AGED 27 YEARS, S/O MUHAMMED KUNJU,  
RESIDING AT SALEELA MANZIL, PRAVACHAMBALAM,  
PALLICHAL VILLAGE, PALLICHAL P.O, PIN - 695 020.

BY ADVS.  
J.R.PREM NAVAZ  
SUMEEN S.  
ANSAR K.C.

RESPONDENT/STATE & DEFACTO COMPLAINANT :

STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM, PIN - 682 031.

SRI. T.R. RANJITH (SR.PP)

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
01.04.2022, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**ORDER**

The petitioner is the accused in Crime No.2/2021 of Neyyattinkara Excise Range Office, Thiruvananthapuram District alleging commission of offences under Sections 20(b)(ii)(C), 8(c), 25 & 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short 'NDPS Act').

2. The allegation against the petitioner, who is the second accused, is that on the basis of secret information, a car bearing registration No.KL-07-C-3840 was searched and 50 Kilograms of Ganja were seized. The petitioner is the driver of a lorry bearing registration No.KL-22-N-4503, in which the Ganja was originally transported to Kerala which was thereafter shifted to the car.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent in the matter. It is submitted that it is only on the basis of the confession of the co-accused, the petitioner cannot be arrayed as an accused as the confession of the co-accused is not admissible in evidence. Therefore, the provisions of Section 37 of the NDPS Act cannot be extended to the petitioner and the rigor contained in that provision does not apply while considering the bail application of the petitioner. It is submitted that the petitioner has been

in custody for more than ten months and his continued detention is not necessary for the purpose of any investigation.

4. The learned Public Prosecutor opposes the grant of bail. It is submitted that the owner of the property, in which the car was parked has given a statement identifying both the petitioner and the first accused in the case. It is submitted that going by the statement given by him (CW9), the petitioner came with a lorry in which the contraband was carried and thereafter the said contraband was shifted to the car in question. It is submitted that at that time both the accused were present at the spot. Learned Public Prosecutor also submits that there are sufficient details including call record details, which show that the petitioner/second accused had gone to Andhra Pradesh in the lorry and had purchased the contraband from Andhra Pradesh and brought it to Thiruvananthapuram. It is submitted that the call record details of the petitioner show that he had contacted the first accused 177 times during the relevant period. It is submitted that the submission of the learned counsel for the petitioner that the petitioner has been arrayed as an accused solely on the basis of the confession statement of the co-accused is not correct in the facts and circumstances of the case.

5. Having regard to the facts and circumstances of the case and considering the decision of the Supreme Court in ***Union of India v.***

***Md. Nawaz Khan [(2021) 10 SCC 100]***, I am of the opinion that the petitioner is not entitled to succeed. The fact that no recovery was made from the possession of the petitioner is no reason to hold that the rigor of Section 37 of the NDPS Act does not apply to the petitioner. The facts and circumstances pointed out by the learned Public Prosecutor clearly indicate the role of the petitioner in the entire matter. *Prima facie*, there is nothing to hold that the petitioner is not guilty of the offence alleged against him.

In the result this bail application fails and is accordingly dismissed.

Sd/-  
**GOPINATH P.**  
**JUDGE**

amk

APPENDIX OF BAIL APPL. 2046/2022

PETITIONER'S ANNEXURES :

Annexure-A1

THE SCANNED COPY OF THE ORDER DATED  
07.02.2022 IN CRL.MP NO: 215 OF 2022  
PASSED BY THE COURT OF ADDITIONAL  
SESSIONS JUDGE-I, THIRUVANANTHAPURAM.