



2025:KER:4895

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 27TH DAY OF JANUARY 2025 / 7TH MAGHA, 1946

BAIL APPL. NO. 4623 OF 2024

CRIME NO.05/2023 OF CHALAKKUDY EXCISE RANGE OFFICE, THRISSUR

PETITIONER/ACCUSED:

M.N. NARAYANA DAS

BY ADVS.
P.VIJAYABHANU, SR.
SRUTHY N. BHAT
P.M.RAFIQ
AJEESH K.SASI
M.REVIKRISHNAN
NIKITA J. MENDEZ
RAHUL SUNIL
SRUTHY K.K
NANDITHA S.
SOHAIL AHAMMED HARRIS P.P.

RESPONDENT/COMPLAINANT

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

BY ADVS.
C.K.SURESH, SR.PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
27.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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P.V.KUNHIKRISHNAN, J

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Dated this the 27th day of January, 2025

O R D E R

False accusations can ruin life, and those who make them must be held accountable. The consequences of false implications can be devastating to the victims in such cases. Therefore the accused in such cases should be caught immediately for investigation, if necessary, and they should be produced before the court of law for trial expeditiously, if materials are there against them to face trial. The court concerned should take such cases out of turn, and if the accused is found guilty after trial, in addition to substantive sentences as prescribed which is to be imposed on the accused, the maximum compensation possible also should be ordered to be paid



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by the accused to victims in accordance with law. Such a clear message should go to the society to strengthen the faith in the system.

2. The prosecution case herein is that, based on the false information of the petitioner herein, a case happened to be registered against one Sheela Sunny alleging offences punishable under Sections 8(c), 22(c) and 60(3) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'). She was in jail for about 72 days because of these false accusations.

3. The prosecution case in brief is like this:- On 27.02.2023, the Excise Inspector, K.Satheeshan attached to Iringalakkuda Excise Circle Office, received secret information regarding the Commission of the NDPS offences. Accordingly, the Officer with his party proceeded to the place mentioned in the secret information. When the Excise party reached the place of



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occurrence, they found a scooter bearing registration No. KL-64-F-1949 and one lady near the scooter. They saw that the lady was opening the seat and taking a bag. The Excise Party intercepted the lady and informed her about the identity of the Excise officers and their intention to search that lady and the scooter. On search of the scooter, a bag containing 0.160 grams of LSD stamps (12 in number) was seized. The lady near the scooter was Sheela Sunny and she was arrested and produced before the Jurisdictional Court. She was remanded to Judicial custody. Thereafter, the investigation was entrusted to the Excise Crime Branch. When the investigation progressed, as per the report of the Chemical Examiner dated 12.05.2023, it was reported that the so-called contraband article seized did not contain Lysergic acid diethylamide(LSD). In view of the above, the original accused namely Sheela Sunny was deleted from the party array of accused. Her case was quashed by this Court



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invoking the powers under Section 482 of the Criminal Procedure Code (Cr.P.C).

4. It is the further case of the prosecution that the secret information was given to the detecting officer by the petitioner. When the investigation progressed it was revealed that the petitioner herein falsely informed the detecting officer that Sheela Sunny was keeping the contraband article in her scooter. After a detailed investigation pertaining to the call details of the petitioner/informant, according to the prosecution, it was revealed that he was near the place of occurrence as on the date and time of occurrence. It is also alleged that there was some dispute between Sheela Sunny and her daughter-in-law. The petitioner is the close friend of the sister of the daughter-in-law of Sheela Sunny. It is also the prosecution case that, the sister of the daughter-in-law used the scooter of Sheela Sunny on the previous day and the contraband was concealed in the scooter by her



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and the information about the same was conveyed to the petitioner and the petitioner thereafter conveyed the same to the Investigating Officer. Therefore, it is alleged that the petitioner committed an offence under Section 58(2) of the NDPS Act. It is also alleged that the petitioner is liable for the offence under Section 28 of the NDPS Act. The petitioner apprehends arrest in the above case. Hence this bail application.

5. Heard Senior Counsel Adv.P. Vijayabhanu assisted by Adv. P.M. Rafiq for the petitioner and I also heard the Senior Public Prosecutor Adv. C.K. Suresh for the respondent.

6. The Senior Counsel submitted that even if the entire allegations are accepted, the only offence that is alleged is Section 58(2) of the NDPS Act, for which the maximum punishment that can be imposed is two years. According to the Senior Counsel, it is a bailable offence. The Senior Counsel submitted that the ingredients of



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Section 28 of the NDPS Act are not attracted to the facts and circumstances of the case. In addition to this point, the Senior Counsel also submitted that the alleged seizure from Sheela Sunny was on 27.02.2023. Thereafter, the 12 LSD stamps seized were analysed by the analyst after about 74 days. Therefore, it is submitted that the contents in the LSD stamps might have been evaporated. Therefore, the petitioner is not liable for not detecting LSD in the stamp seized from Sheela Sunny is the submission.

7. The Senior Counsel also submitted that if the Police and Excise parties begin to register cases against the informants in such matters, nobody will come forward to give information to the Police and Excise parties. The Senior Counsel also submitted that the sister of the daughter-in-law of Sheela Sunny filed a bail application apprehending arrest and that application was closed, recording the submission of the prosecutor that she has



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not been arraigned as the accused. If that is the case, there is absolutely no connection between the petitioner and Sheela Sunny.

8. The contention of the Senior Counsel is that the case is registered based on media reports. It is also submitted that the statement given by the detecting officer under Section 164 Cr.P.C before the Magistrate, is because of the compulsion from the officers and he gave the statement when his daughter's wedding was scheduled. Hence, it is alleged that this is a false case foisted against the petitioner.

9. Senior Public Prosecutor Adv. C.K. Suresh seriously opposed this bail application. The Senior Public Prosecutor submitted that this is a clear case in which the petitioner actively participated to implicate Sheela Sunny in a false case under the NDPS Act. The Senior Public Prosecutor submitted that the investigation is going in a proper manner and several materials are collected. The



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State intends to constitute a special team to investigate this case, especially on the conspiracy angle. Therefore, it is submitted that this Court may not grant bail to the petitioner and custodial interrogation of the petitioner is necessary.

10. This Court considered the contentions of the Senior Counsel for the petitioner and the Senior Public Prosecutor. The first contention raised by the Senior Counsel is that, even if the entire allegations are accepted, only an offence under Section 58(2) of the NDPS Act is attracted, in which the maximum punishment that can be imposed is only two years. Section 58(2) of the NDPS Act says that, any person willfully and maliciously giving false information and so causing an arrest or a search being made under this Act shall be punishable with imprisonment for a term which may extend to two years or with fine or with both. Admittedly, the case was registered against Sheela Sunny alleging



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offences punishable under Section 22(c) of the NDPS Act.

Section 22(c) of the NDPS Act says that, when commercial quantity of contraband is seized from a person, the punishment shall not be less than 10 years, but which may extend to 20 years and shall also be liable to fine, and it shall not be less than one lakh, but which may extend to two lakhs. If we accept the contention of the Senior Counsel, it will lead to a conclusion that there is disproportionality in sentence. For false implication of an innocent person in a case under Section 22(c) of the NDPS Act, the culprit who falsely implicated the innocent person can escape with an imprisonment of two years, whereas if the court finds guilty of the person who was falsely implicated, he has to face a minimum sentence of 10 years, which may extend to 20 years and also a minimum fine of Rs.1 lakh, which may extend to Rs.2 lakhs. The punishment should be fit to the crime and the sentence should reflect the severity of the offence.



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False implication of someone in an NDPS case can lead to severe consequences to him.

11. As I mentioned earlier, false accusations can ruin the life of a person, but the truth will eventually come out. The worst thing about false accusations is that they can be so easily made and are so hard to disprove. Mark Twain, an American writer, once observed that “ a lie can travel halfway around the world, while the truth is still putting on its shoes”. False accusations are the most malignant and venomous of all calumnies. Hence, sentences to be imposed by a court of law in such cases should be fair, proportionate and just. The punishment should fit the crime and the sentence should reflect the severity of the offence. If there is any inadequacy in the sentence in these type of cases, the Parliament should think seriously about the same. Registry will forward a copy of this order to the Union of India to do the needful in accordance with law.



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12. The contention of the Senior Counsel is that Section 28 of the NDPS Act is not attracted to the facts and circumstances of the case. On the other hand, the Senior Public Prosecutor submitted that Sections 28 and 58(2) of the NDPS Act are attracted. According to the Senior Public Prosecutor, the other offences under the Indian Penal Code (IPC) will also attract to the facts and circumstances of the case and the Investigating Officer is investigating the matter. This is a bail application. Now, the case is registered under Sections 28 and 58(2) of the NDPS Act. The Public Prosecutor submitted that the investigation is going on and other offences are also to be added. The custodial interrogation of the petitioner is necessary. In such circumstances, I am of the considered opinion that this Court need not consider the ingredients of Section 28 or 58(2) of the NDPS Act to find out whether a prima facie case is made out against the petitioner at this stage. That question is left open. The Investigating



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Officer is free to investigate the matter in accordance to law.

13. The Senior Counsel also submitted that, when there is a specific provision like Section 58 (2) of the NDPS Act, the IPC offences cannot be added in these cases. I do not want to make any observations about the same. The prosecution has yet to add such offences. Therefore, this Court need not consider the same at this stage.

14. The allegation against the petitioner is very serious. The statement of the detecting officer, K.Satheeshan, was recorded by the Judicial First Class Magistrate Court-I, Thrissur, under Section 164 Cr.P.C. The same is made available by the Senior Public Prosecutor. This Court perused the same. The perusal of the same would show that the informer gave information regarding the bag in which the contraband was concealed and the photos of the bag were also forwarded to the



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Investigating Officer. How the photos of the bag were obtained by the informant, is a matter to be investigated, especially when there is an allegation of wide conspiracy. According to the prosecution, this is supplied by the sister of the daughter-in-law of Sheela Sunny and there is a wide conspiracy between all these persons. I do not want to make any observations about the same also. This is also a matter to be investigated. A statement is filed by the Investigating Officer in which it is stated that they collected the mobile phone call records of the petitioner and the other suspects. The statement of the Investigating Officer is that, it is a clear case in which the conspiracy led to Sheela Sunny being falsely implicated in the case. In such a case, I am of the considered opinion that this Court cannot simply grant bail to the petitioner. Let the investigation be completed.

15. The Senior Counsel also challenged the validity of the statement given under Section 164 Cr.P.C. The



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same cannot be decided in a bail application. Of course, the admissibility of a statement under Section 164 Cr.P.C can be decided at the appropriate stage. The Senior Counsel then argued that the contraband was seized on 27.02.2023 and the same was examined by the analyst only after 74 days, therefore, there is a chance that the substance might have been evaporated. The Senior Counsel relied on the Division Bench judgment of this Court in **Naufal v. State of Kerala** [MANU/KE/3887/2022]. Several other decisions of the Hon'ble Apex Court and this Court are also cited by the Senior Counsel to show that there is a chance for evaporation.

16. The prosecution case is that the contraband was concealed in the scooter of Sheela Sunny by the suspects and there is a conspiracy between the suspects and the petitioner. If the case of the Senior Counsel that the contents of LSD might have been evaporated is



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accepted, the petitioner and suspects are also liable for the offences under Section 22(c) read with Section 29 of the NDPS Act for possessing LSD stamps and for conspiracy, if there are materials to show that the contraband was concealed in the scooter by the petitioner and suspects, after hatching a conspiracy. Only after possessing the LSD stamps, the suspects can conceal it in the scooter. Mere possession of LSD stamps itself is an offence. If the petitioner conspired with the suspects and obtained LSD stamps and concealed them in the scooter of Sheela Sunny, the investigating officer can charge them for Section 22(c) read with Section 29 of the NDPS Act also. In other words, these contentions of the petitioner will only create more trouble for himself. That will also strengthen the case of the prosecution, that the petitioner and other suspects tried to falsely implicate Sheela Sunny in an NDPS case. I leave it there. Let the investigating officer conduct the investigation in all



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angles, untrammelled by any observation in this order. But, I am of the considered opinion that this is not a fit case, in which this Court has to invoke the extraordinary jurisdiction under Section 438 Cr.P.C, to release the petitioner on Anticipatory Bail.

17. The Senior Public Prosecutor submitted that the State Police Chief is taking steps to constitute a special team to investigate the matter. The State Police Chief should take appropriate action forthwith and complete the investigation of this case forthwith. If the facts alleged against the petitioner and other suspects are correct, it is very serious. A poor lady is implicated in an NDPS Case because of some enmity and she continued in jail after registration of the case for about 72 days. Who will compensate her for this? I am of the considered opinion that the State Police Chief should take necessary steps to complete the investigation in this case, as expeditiously as possible, at any rate, within a period of



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three months from the date of receipt of the copy of this order. The Registry will forward a copy of this order to the State Police Chief forthwith. Once the Investigation is complete and the final report, if any, is filed alleging any offence, the Jurisdictional Court will try to dispose of the case within 4 months. The registry will forward a copy of this order to the Jurisdictional Court also forthwith. A copy of the order should be forwarded to the Union of India also for the reasons mentioned in paragraph 11 of this order.

18. Upshot of the above discussion is that, the petitioner is not entitled to be released on anticipatory bail. The petitioner shall surrender before the Investigating Officer within a period of seven days. If the petitioner is not surrendering within seven days, the Investigating Officer can take coercive steps to arrest the petitioner.



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With the above observation, the bail application
is dismissed.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

AMR



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APPENDIX OF BAIL APPL. 4623/2024

PETITIONER'S ANNEXURES

- | | |
|-------------------|--|
| Annexure 1 | TRUE COPY OF THE SEIZURE MAHAZAR IN CRIME NO. 05/2023 OF THE EXCISE RANGE OFFICE, CHALAKUDY |
| Annexure 2 | TRUE COPY OF THE FORWARDING NOTE DATED 01-03-2023 IN CRIME. NO. 05/2023 OF THE EXCISE RANGE OFFICE, CHALAKUDY |
| Annexure 3 | TRUE COPY OF THE CERTIFICATE OF CHEMICAL ANALYSIS REPORT DATED 12-05-2023 IN CRIME. NO. 05/2023 OF THE EXCISE RANGE OFFICE, CHALAKUDY |
| Annexure 4 | TRUE COPY OF THE REPORT DATED 05-07-2023 IN CRIME NO. 05/2023 EXCISE CRIME BRANCH, CHALAKKUDY BEFORE THE COURT OF SESSION, THRISSUR ALTERING THE CHARGES, |
| Annexure 5 | TRUE COPY OF THE REPORT DATED 30-01-2024 FILED BY THE EXCISE RANGE OFFICE IN CRIME NO. 05/2023 OF EXCISE RANGE OFFICE, CHALAKUDY BEFORE THE COURT OF SESSIONS, THRISSUR, ARRAYING THE APPLICANT AS AN ACCUSED |
| Annexure 6 | TRUE COPY OF THE ORDER 12-04-2024 IN CRL.M.P. NO. 1560/2024 OF THE COURT OF THE SESSIONS JUDGE, THRISSUR |
| Annexure 7 | TRUE COPY OF THE ORDER DATED 22-12-2023 IN W.P.(C).NO.44807/2023 OF THIS HON'BLE COURT |
| Annexure 8 | TRUE COPY OF THE ORDER OF REINSTATEMENT DATED 06-02-2024 |