



2025:KER:22282

'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 11TH DAY OF MARCH 2025 / 20TH PHALGUNA, 1946

CRL.MC NO.970 OF 2024

CRIME NO.366 OF 2020 OF VYTHIRI POLICE STATION, WAYANAD
ORDER IN CMP 3513 OF 2023 IN SC NO.228 OF 2020 OF
ADDITIONAL DISTRICT COURT & SESSIONS COURT - II, KALPETTA

PETITIONERS/ACCUSED NO.1:

JAMSHEER ALI
AGED 35 YEARS
S/O.ABDU, KARATTU HOUSE, AANOTH,
POZHUTHANA VILLAGE, VYTHIRI TALUK,
WAYANAD DISTRICT, PIN - 673576

BY ADVS.
ADITHYA RAJEEV
S.PARVATHI

RESPONDENTS/STATE AND SHO:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, KOCHI,
PIN - 682031
- 2 STATION HOUSE OFFICER
VYTHIRI POLICE STATION, VYTHIRI,
KUNNATHIDAVAKA, WAYANAD DISTRICT, PIN - 673576

SMT.REKHA S, SR PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 11.03.2025, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:



'CR'

P.G. AJITHKUMAR, J.**Crl.M.C.No.970 of 2024****Dated this the 11th day of March 2025****ORDER**

In this petition filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioner assails Annexure-VIII order by which the Special Court for NDPS Act Cases, Kalpetta cancelled bail granted to the petitioner in Sessions Case No.228 of 2020 pending before that Court. The reason for cancelling his bail is that he violated condition No.2 in Annexure-III order, by involving in Crime No.51 of 2023 of Kalpetta Excise Range where offences punishable under Sections 20(b)(ii)(B) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) are alleged.

2. The petitioner would contend that the learned Special Judge did not consider any of the materials concerning Crime No.51 of 2023 and on mere perusal of Annexure-V occurrence report in that crime, mechanically cancelled the bail. When the learned Special Judge did so, the provisions of



Section 439(2) of the Code are violated and Annexure-VIII order became illegal. Accordingly, the petitioner contends that the said order is liable to be set aside.

3. Heard the learned counsel for the petitioner and the learned Senior Public Prosecutor.

4. A report of the Station House Officer, Vythiri Police Station is made available for my perusal.

5. In S.C.No.228 of 2020, the offence alleged is punishable under Section 20(b)(ii)(B) read with Section 8(c) of the NDPS Act. Annexure-II is a copy of the Final Report based on which Sessions Case No.228 of 2020 was instituted. The allegation therein is that the petitioner was found in possession of 3.380 kilograms of Ganja. In that case, the petitioner was granted statutory bail as per Annexure-III order dated 04.09.2020. The second condition therein is that the petitioner should not commit any offence while on bail. It is alleged that the petitioner committed a similar offence on 16.11.2023 and thereby violated condition No.2 in Annexure-III. Annexure-V is the occurrence report in that regard which was registered on 17.11.2023. The allegation therein is that



Crl.M.C.No.970 of 2024

he together with the 2nd accused in that crime were in possession of 11.3 Kilograms of Ganja.

6. After apprehending the petitioner in Crime No.51 of 2023, the investigating officer filed Crl.M.P.No.3513 of 2023 in Sessions Case No.228 of 2020 seeking to cancel bail granted to the petitioner as per Annexure-III order for the reason that he involved in Crime No.51 of 2023. The Special Court cancelled the bail as per Annexure-VIII order. The operative part of the said order reads thus:

"7. I have carefully gone through the case records in SC 228/2020 and also the record pertaining to other crime referred to above and made available along with the affidavit of the S.H.O, Vythiri Police Station. The accused has been granted bail by this court on 04.09.2020 in Crl.M.C.No.547/2020 with certain conditions. The 2nd condition is that the petitioner/accused shall not commit any offence during the time of bail.

8. From the records, it is found that the accused has been involved in crime No.51/2023 under Sections 29, 20(b)(ii)(B) r/w 8(c) of the NDPS Act after his release on bail in this case. Hence, the accused violated the bail condition No.2 imposed by this court while granting bail. Therefore, the bail is liable to be cancelled and hence to be re-arrested."



7. The learned counsel for the petitioner places reliance on **Godson and another v. State of Kerala [2022(4) KLJ 150]**, **Renjith v. State of Kerala [2023(2) KHC 310]**, **Visakh v. State of Kerala [2024(6) KLT 415]** in order to contend that the Special Court did not follow the procedure contemplated for cancellation of the bail. It is further submitted that the Special Court did not consider materials in order to arrive at a satisfaction that the condition was violated. It is accordingly contended that Annexure - VIII order is vitiated.

8. In the aforesaid decisions, the learned Single Judges essentially placed reliance on the principles laid down by the Apex Court in **Dolat Ram and others v. State of Haryana [(1995) 1 SCC 349]** and **Dataram Singh v. State of Uttar Pradesh [(2018) 3 SCC 22]** in order to have findings as to the parameters to be followed while ordering cancellation of bail. Another learned Single Judge of this Court in Crl.M.C.No.1199 of 2025 considered the question as to the requirements for cancelling bail of an accused who was involved in an offence under the NDPS Act the second



time. The learned Single Judge after considering the decisions in **Godson and another v. State of Kerala [2022(4) KLJ 150]**, **Renjith v. State of Kerala [2023(2) KHC 310]**, **Visakh v. State of Kerala [2024(6) KLT 415]** observed as follows:

"6. It is true that in the decision of this Court cited above it has been held that bail once granted cannot be cancelled mechanically by reason of the accused's involvement in a subsequent crime, unless the prosecution has a case that by such involvement the accused intended to interfere with the administration of justice in relation to the trial of the case in which he was granted bail. In this context it is essential to note that except in **Visakh** (supra), the offences alleged in the 1st crime where the accused was granted bail as well as the offences in the subsequent crime were punishable under the Indian Penal Code. In **Visakh** (supra), while bail was granted in a crime registered for the offence under Section 20(b)(ii)(B) of the NDPS Act, the subsequent crime was registered for offences under the IPC. As against this, in the case at hand, the crime in which bail was granted as well as the subsequent crimes are registered for the offences punishable under the NDPS Act. In this context, Section 31 of the NDPS Act providing for enhanced punishment for offences after previous conviction, Section 31A providing for death penalty for certain offences after previous conviction and



the rigour of Section 37, in the matter of grant of bail for certain offences cannot be overlooked. The above provisions are indicative of the gravity of drug related crimes and severity of punishment in view of its societal impact. While on the point, it is essential to mention that in the year 2024, 24,517 narcotic related arrests were reported in Kerala, compelling even the State legislature to suspend its regular business for discussing the social impact of substance abuse. This Court cannot be oblivious of this reality. The poisonous fangs of the drug mafia have reached even our school going children. While liberty of an individual is precious and is to be protected zealously, that cannot be at the cost of the society. An accused who allegedly misused his liberty by committing the same offence, if allowed to roam free, will undoubtedly be a threat to the society. Bail granted to such an accused is liable to be cancelled, even if the subsequent crime/s does not have the effect of interfering with the trial of the case in which he was granted bail. Pertinent to note that, misuse of liberty by the accused indulging in similar/other criminal activity, finds a prominent place among the circumstances justifying cancellation of bail enumerated in **P. v. State of Madhya Pradesh [(2022) 15 SCC 211].**"

9. The learned Senior Public Prosecutor pointed out that the petitioner was involved not only in the two crimes referred to in Annexure-VIII order, but in several other



crimes. It is seen that proceedings under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 (KAAPA Act) was also initiated against the petitioner. However, while considering a plea for cancellation of bail on the ground that the accused violated bail condition by involving in another crime, his involvement in other crimes on prior occasions may not be a criterion. As held in the judgment in Crl.M.C.No.1199 of 2025, the ramification of the petitioner's involving in offences under the NDPS Act subsequently may be of more relevant consideration especially in the light of the provisions of Sections 31 and 31A of the NDPS Act.

10. Be that as it may, the question is whether the order of the Special Court cancelling bail granted to the petitioner can be sustained or not. As rightly pointed out by the learned counsel for the petitioner, the order of the Special Court, relevant part has been extracted above, does not contain even a subjective satisfaction that the petitioner has *prima facie* committed the second offence. Registration of the second crime *ipso facto* need not result in cancellation of the bail. Of course, the condition is that the petitioner should not



involve in any other crime while on bail. Even so, cancellation of bail being something affecting the personal liberty of a person, the court should have undertaken a summary enquiry as held by the Apex Court in **Dataram** (supra). The Special Court should have called for the materials concerning Crime No.51 of 2023 and after considering such materials alone a finding should have been rendered.

11. Crime No.51 of 2023 was registered on 17.11.2023. The contention of the learned counsel for the petitioner that having more than three years elapsed after registration of the first crime, the involvement of the petitioner in the second crime may not be a reason to cancel his bail. It cannot be accepted considering the fact that the offences involved in both the crimes are under the NDPS Act. The view taken by this Court in Crl.M.C.No.1199 of 2025 tempts me to repel the said contention.

12. As stated, the Special Court ought to have taken a decision on the plea for cancellation of the bail after considering the available materials concerning Crime No.51 of 2023 of the Excise Range, Kalpetta. Since no such exercise



Crl.M.C.No.970 of 2024

was undertaken by the Special Court, there is no other option than setting aside Annexure-VIII order and directing the Special Court to consider the matter afresh.

Therefore, this Crl.M.C is allowed. Annexure VIII order is set aside, and the matter is remitted to the Special Court for a fresh consideration. The Station House Officer, Vythiri Police Station shall collect and furnish all the materials concerning Crime No.51 of 2023 of Excise Range, Kalpetta. If a final report/complaint is already submitted in that crime, copies of the same shall also be submitted. The Special Court after considering such materials and hearing both sides, will take a fresh decision in the matter in the light of the law laid down by the Apex Court in **Dolat Ram and others v. State of Haryana [(1995) 1 SCC 349]** and **Dataram Singh v. State of Uttar Pradesh [(2018) 3 SCC 22]** and order of this court in Crl.M.C.No.1199 of 2025. The Special Court shall take a decision in the matter as expeditiously as possible at any rate within a period of three weeks from the date of receipt of a certified copy of the order. A copy of the order of



2025:KER:22282

11

Crl.M.C.No.970 of 2024

this court in Crl.M.C.No.1199 of 2025 shall also be sent to the
Special Court.

Sd/-
P.G. AJITHKUMAR
JUDGE

PV

APPENDIX OF CRL.MC 970/2024

PETITIONER ANNEXURES

- Annexure 1** A TRUE COPY OF THE FIRST INFORMATION REPORT DATED 03.07.2020 IN CRIME NO. 366/2020 OF THE VYTHIRI POLICE STATION, WAYANAD DISTRICT
- Annexure-II** A TRUE COPY OF THE FINAL REPORT DATED 05.09.2020 IN CRIME NO. 366/2020 OF THE VYTHIRI POLICE STATION, WAYANAD DISTRICT
- Annexure-III** A TRUE COPY OF THE ORDER DATED 04.09.2020 IN CRL M.C. NO. 547/2020, BEFORE THE COURT OF SPECIAL JUDGE NDPS ACT CASES/ADDITIONAL SESSIONS JUDGE-II, KALPETTA, WAYANAD
- Annexure-IV** A TRUE COPY OF THE ONLINE CASE DETAILS IN SC NO. 228/2020 BEFORE THE COURT OF SPECIAL JUDGE NDPS ACT CASES/ADDITIONAL SESSIONS JUDGE-II, KALPETTA, WAYANAD, AS AVAILABLE IN THE OFFICIAL WEBSITE OF THE DISTRICT COURT (E-COURTS)
- Annexure-V** A TRUE COPY OF THE CRIME AND OCCURRENCE REPORT DATED 17.11.2023 IN CRIME NO. 51/2023 OF THE KALPETTA EXCISE RANGE
- Annexure-VI** A TRUE COPY OF THE REPORT DATED 21.11.2023, SUBMITTED BY THE 2ND RESPONDENT BEFORE THE COURT OF SPECIAL JUDGE NDPS ACT CASES/ADDITIONAL SESSIONS JUDGE-II, KALPETTA, WAYANAD
- Annexure-VII** A TRUE COPY OF THE OBJECTION DATED 11.12.2023 IN CRL M.P. NO.3513/2023 OF SC NO. 228/2020 BEFORE THE COURT OF SPECIAL JUDGE NDPS ACT CASES/ADDITIONAL SESSIONS JUDGE-II,



2025:KER:22282

Crl.M.C.No.970 of 2024

KALPETTA, WAYANAD

Annexure-VIII **A FAIR COPY OF ORDER DATED 27.12.2023
IN CRL M.P. NO. 3513/2023 OF SC NO.
228/2020 ISSUED BY THE COURT OF
SPECIAL JUDGE NDPS ACT
CASES/ADDITIONAL SESSIONS JUDGE-II,
KALPETTA, WAYANAD**

Annexure-IX **A TRUE COPY OF THE ORDER DATED
22.01.2024 IN CRL M.C. NO. 59/2024,
BEFORE THE COURT OF SPECIAL JUDGE NDPS
ACT CASES/ADDITIONAL SESSIONS JUDGE-
II, KALPETTA, WAYANAD**