



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 10TH DAY OF SEPTEMBER 2024 / 19TH BHADRA, 1946

OP (CRL.) NO. 639 OF 2024

CRIME NO.5/2016 OF Udumbanchola Excise Range Office, Idukki

AGAINST THE ORDER/JUDGMENT DATED 06.09.2024 IN SC NO.66

OF 2020 OF SPECIAL COURT (NDPS ACT CASES), THODUPUZHA.

PETITIONER:

ASANUL BANNA
AGED 31 YEARS
S/O.AMEER, NOOR MAHAL, CRESANT NAGAR, 79B,
PALLIMUKKU KARA, VADAKKEVILA VILLAGE, KOLLAM
DISTRICT
PIN - 691010

BY ADVS.
K.SIJU
S.ABHILASH
ANJANA KANNATH
MARIYA JOSE

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031
- 2 EXCISE INSPECTOR
EXCISE RANGE OFFICE, UDUMBANCHOLA, IDUKKI, PIN -
685554

SRI.G SUDHEER, P.P



**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
10.09.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



“CR”

K.BABU, J.

O.P(Crl) No.639 of 2024

Dated this the 10th day of September, 2024

JUDGMENT

The prayers in this Original Petition are as follows:-

“(i) To set aside Ext.P2 order passed by the Special Court for NDPS Act Cases, Thodupuzha in CrI.M.P No.559/2024 in SC No.66/2020 in C.R No.5/2016 of Excise Range, Udumbanchola and to re-schedule the trial in the interest of justice.

ii. To pass such other reliefs that this Hon'ble Court deem fit and proper.

iii. To permit the petitioner to dispense with filing of translation of exhibits in vernacular language along with the OP(Crl).”

2. The petitioner is accused No.1 in S.C.No.66 of 2020 on the file of the Special Court (NDPS Act Cases), Thodupuzha. The Sessions Case was scheduled for trial on 11.09.2024. The petitioner filed an application seeking adjournment of the trial stating the reason that his lawyer has inconvenience as he is engaged in the trial in another matter.

3. The learned Sessions Judge rejected the application on 06.09.2024 holding that the reason stated for adjournment is not sufficient.

4. The learned counsel for the petitioner submitted that the learned Sessions Judge has passed Ext.P2 order



mechanically without considering the valuable right of the accused to be defended by a lawyer of his choice. Relying on Rule 77A(2) of the Criminal Rules of Practice, Kerala, 1982, the learned counsel for the petitioner submitted that the learned Sessions Judge ought to have heard the prosecution and the accused to ascertain and fix consecutive dates for recording evidence. It is further submitted that the learned Sessions Judge did not provide any opportunity to hear the prosecution and the accused before scheduling the case for trial. The learned counsel for the petitioner relied on *Vishnu v. State of Kerala* [2023 (7) KHC 155] in support of his contentions.

5. Rule 77A(2) of the Criminal Rules of Practice, Kerala, 1982 reads thus:

77A-Directions for Expeditious trial- (1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible. When the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) At the commencement and immediately after framing charge, the court shall hear the prosecution and the accused to ascertain and fix consecutive dates for recording of evidence, regard being had to whether the witnesses are material or eyewitnesses or formal witnesses or are experts.



(3) The Court shall draw up a schedule indicating the consecutive dates for examination of witnesses. The Court may group witnesses into different sets and schedule their Examination on different dates. The Court shall also, before commencement of trial, ascertain if the parties wish to carry out admission of any document under section 294 of the Code and permit them to do so, after which such consecutive dates for trial shall be fixed.

(4) After the commencement of the trial, if the court finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable. If witnesses are in attendance no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded, in writing.

6. Sub Rule (2) of Rule 77A mandates an opportunity of being heard to both the sides before the court fixes the dates for recording evidence. A fair trial has a sacrosanct purpose. It has a demonstrable object that the accused should not be prejudiced.

7. The right of an accused to defend his case by engaging a counsel of his choice is a valuable right. Under Article 22(1) of the Constitution of India, an accused person has been guaranteed the right to engage a counsel of his own choice. Section 303 of the Code of Criminal Procedure, 1973



and Section 340, the corresponding provision of the Bharatiya Nagarik Suraksha Sanhita, 2023, also give the right to the accused person to engage a counsel of his own choice.

8. In **Vishnu v. State of Kerala (supra)**, this Court held that the prosecution and the accused have a role in fixing the date of trial and that the Court cannot make a unilateral decision regarding trial scheduling.

9. The impugned order does not indicate that the learned Sessions Judge heard the prosecution and the accused before scheduling the trial.

10. Hence, the order dated 06.09.2024 is set aside, and the learned Session Judge, Thodupuzha, is directed to reschedule the trial in S.C.No.66 of 2020 to a day after 30.09.2024 after hearing both sides.

The Original Petition is allowed as above.

Sd/-
K.BABU
JUDGE



APPENDIX OF OP (CRL.) 639/2024

PETITIONER EXHIBITS

- Exhibit P1** **THE COPY OF RELEVANT PAGES OF COMPLAINT
SUBMITTED BY THE 2ND RESPONDENT BEFORE THE
SPECIAL COURT FOR NDPS ACT CASES DATED
3.6.2016**
- Exhibit P2** **THE COPY OF ORDER PASSED BY THE SPECIAL
COURT FOR NDPS ACT CASES, THODUPUZHA IN
CRL.M.P NO.559/2024 DATED 6.9.2024**
- Exhibit P3** **THE COPY OF CASE STATUS OF SC NO.1254/2019
ON THE FILE OF SPECIAL FAST TRACK COURT,
KOTTARAKKARA DATED 16.8.2024 DOWNLOADED
FROM THE E-COURT SERVICES**

//True copy//PA to Judge