

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 08TH DAY OF MAY, 2020 / 18TH VAISAKHA, 1942

B.A. No.2478 /2020

(Seeking regular bail in Crime 350 of 2020 of the Koratty Police Station pending before the jurisdiction of the JFCM, Chalakudy, Thrissur District)

Petitioner/Accused :-

Subish, aged 39, S/o.Subran, Chemminiyadan House, Koovakkattukunnu Desom, Meloor Village, Chalakudy Taluk, Thrissur District,

By Adv. Bitto.N.L.

Respondent/State of Kerala:-

1. The State of Kerala, rep. by the public Prosecutor High court of Kerala at Ernakulam.
2. Sub Inspector of Police, Koratty Police Station, Koratty P.O., Chalakudy Taluk, Thrissur district

SRI. AJITH MURALI, PUBLIC PROSECUTOR

SRI. SANTHOSH PETER SR.PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A.No.2478 of 2020

Dated this the 8th day of May, 2020

O R D E R

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. The petitioner is the accused in Crime No.350/2020 of Koratty Police Station. The above case is registered against the petitioner alleging offence punishable under Section 55(g) of the Abkari Act.

3. The prosecution case is that, on 10.4.2020 at about 11.30 am., the petitioner was found in possession of 480 litres of wash and utensils to distill the same. The petitioner was arrested on 10.4.2020.

4. The learned counsel for the petitioner submitted that the petitioner is in custody from 10.4.2020 and he is ready to abide any condition, if this Court grant bail to the petitioner.

5. The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor submitted that huge quantity of wash is seized from the petitioner. Wash is a material for manufacturing illicit liquor. Therefore, the learned Public Prosecutor submitted that, the petitioner is not entitled for bail at this stage.

6. After considering the facts and circumstances of the case, according to me, this is not a fit case, in which the bail can be granted. Huge amount of wash is seized from the petitioner. Wash is a material for manufacturing illicit liquor. Moreover, Section 41A of the Abkari Act says that, if the learned Public Prosecutor opposed the bail application, the court can grant bail only in certain circumstances. I am of the opinion that, this is not a fit case, in which the bail can be granted to the petitioner at this stage.

7. Moreover, the jurisdiction to grant bail has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in **Chidambaram P v Central Bureau of Investigation (AIR 2019 SC 5272)** the following factors

are to be taken into consideration while considering the application for bail.

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

It is true that there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be decided on

the basis of the facts and circumstances of that case. In the light of the general principles laid down in the above judgment and considering the facts and circumstances of this case, I am of the opinion that this is not a fit case in which the petitioner can be released on bail. Hence this Bail Application is dismissed.

P.V.KUNHIKRISHNAN, JUDGE

skj