

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. (TMP) No.2632 /2020

Crime No: 30 of 2020 of Cherupulassery Excise Range, Palakkad)

Petitioners/Accused Nos.1 & 2 .

1. Ajeesh,
Aged 29 years, S/o Radhakrishnan, Thekkepurakkal,
Ottapalam.Palakkad District.
2. Roshin,
Aged 29 years, S/o Arumughan, Kizhakkepurakkal,
Kuruvattor, Vellinezhi PO, Ottapalam, Palakkad .

By Adv. Sri. S. Renjith.

Respondents/complainants:

1. State of Kerala
Represented by the Public prosecutor
High Court of Kerala, Ernakulam, Pin-682 031
2. Circle Inspector
Excise Range Office, Ottapalam-Cherppulassery Road,
Thrikkadeeri -I, Munnurkode P.O, Palakkad, Pin 679502

SRI. AJITH MURALI, PP
SRI. SANTHOSH PETER SR.PP

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

ORDER

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

2. The petitioners are the accused Nos.1 and 2 in Crime No.30 of 2020 of Cherupulassery Excise Range, Palakkad District registered alleging offences punishable under Sections 55(g) & 8(1) & (2) of the Kerala Abkari Act. The petitioners were arrested on 18.04.2020 and they are in custody.

3. The prosecution case is that on 18.04.2020 at about 1.10 a.m. when the Excise Party was conducting their checking in Ottapalam Taluk, Vellinezhi Village, they seized 1.6 litres of illicit arrack and 20 liters of wash from a brook near the house of one Balakrishnan. According to the Prosecution, the petitioners are in possession of the above illicit liquor.

4. The learned counsel for the petitioners submitted that the contraband articles were seized from an open space and the petitioners have no connection with the contraband

articles. Moreover, he submitted that the petitioners are in custody from 18.04.2020 onwards.

5. The learned Public Prosecutor submitted that if this Court is granting bail to the petitioners, stringent conditions may be imposed on the petitioners.

6. After hearing both sides, I think this Bail Application can be granted. It is an admitted fact that the contraband articles were not seized from the physical possession of the petitioners. The case of the petitioners is that the contraband articles were seized from an open space and hence they are not the persons in possession of the said illicit arrack. Of course, it is a matter to be decided at the time of trial. The petitioners are in custody from 18.04.2020 onwards. Considering the facts and circumstances of the case, I think this Bail Application can be allowed.

7. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the Hon'ble Supreme Court in **Re: Contagion of COVID-19 Virus In Prisons case (Suo**

Motu Writ Petition(C) No.1 of 2020) and a Full Bench of this Court in **Writ Petition(C) No.9400 of 2020** issued various salutary directions for minimizing the number of inmates inside prisons.

8. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in ***Chidambaram P. v. Directorate of Enforcement (2019 (16) SCALE 870)***, after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

9. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The Superintendent of Jail concerned where the petitioners are incarcerated is directed to release the petitioners on bail on

executing a self bond ensuring that they will appear before the Court concerned as and when required if they are not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioners as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone number and the address at which the petitioners would be residing after their release.

3. The Superintendent of Jail concerned, immediately after release of the petitioners will forthwith forward the bail bond obtained from the petitioners to the jurisdictional Court.

4. The petitioners immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish their phone

number and the place where they are going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioners and shall ensure that the petitioners do not violate the terms of the undertaking.

5. The petitioners shall appear before the Investigating Officer as and when required. The petitioners shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

6. The petitioners shall within one week from the commencement of the functioning of the jurisdictional court, if the court is not functioning at present, execute a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

7. The petitioners shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing and other directions in the wake of declared lock-down.

8. If any of the above conditions are violated by the petitioners, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

pkk