

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.2640 /2020

(S.C No 565/2018 on the files of Assistant Sessions Judge,  
Kasaragod in Crime No 72/2015 of Kumbala Excise Range,  
Kasaragod)

**Petitioner/ Accused**

Pradeep.K, aged 35 years,  
S/o Gopala, Subhash Nagar Veedu,  
Kubannur Village, Manjeshwaram,  
Kasaragod - 671 323

By Adv. Sri V.A VINOD

Vs

**Respondents/Complainant and State;**

- 1.State of Kerala rep; by Public Prosecutor,  
High Court of Kerala, Ernakulam - 682031.
- 2.The Excise Inspector,  
Kumbala Excise Range, Kasaragode - 671 321

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:

**P.V.KUNHIKRISHNAN, J**

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B.A.No.2640 of 2020  
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Dated this the 8<sup>th</sup> 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. Petitioner is the accused in SC No.565 of 2018 on the file of the Assistant Sessions Judge, Kasaragod. The above case is registered against the petitioner alleging offence punishable under Section 58 of Kerala Abkari Act.

3.The prosecution case is that on 1.12.2015, the petitioner was found in possession of 7.200 liters of Indian Made Foreign Liquor which is meant for sale in Karnataka State only and hence committed the above

said offence.

4. The counsel for the petitioner submitted that he has not committed the offence. Moreover, he submitted that he appeared before the court below after receipt of summons. He was regularly appearing before the court. Due to a communication gap between the petitioner and his counsel he was not able to appear before the court on a particular day and the learned Session Judge issued non bailable warrant. When the petitioner surrendered before the court below on 20.2.2020, he was remanded and the bail application is dismissed.

5.The learned Public Prosecutor submitted that the presence of the petitioner is necessary for completing the trial. He violated the conditions of the bail order.

6.Considering the facts and circumstances of this case, and considering the fact that the petitioner was

regularly appearing before the lower court and his absence was on a particular day on which he was represented through counsel on all earlier occasions, I think bail can be granted on stringent conditions.

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 **W.P(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 petitioner is incarcerated is directed to release the petitioner on bail on executing a self bond ensuring that he will appear before the Court concerned as and when required, if he is not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioner 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 petitioner would be residing after his release.

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

4. The petitioner immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish his phone number and the place where he is going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioner and shall ensure that the petitioner

does not violate the terms of the undertaking.

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

6. The petitioner 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 petitioner 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 petitioner, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

**P.V.KUNHIKRISHNAN,**

**JUDGE**

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