

**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**

**BA NO.2648 OF 2020**

(CRIME No.371/2020 OF KATTOOR POLICE STATION, THRISSURE DISTRICT)

**Petitioner/Accused :-**

1. Vijesh, aged 32 years, S/o.Vishwanathan,  
Thekkoot House, Karalam Desom, Karalam Village,  
Thrissur District.

By. Adv. Haris E.A

**Respondent/Complainant**

1. State of Kerala, represented by  
Public Prosecutor, High Court of Kerala, Ernakulam.

By P.P. Sri.Ajith Murali & Santhosh Peter(Sr)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 08.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J**

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B.A.No.2648 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 Crime No.371 of 2020 of Kattoor Police Station registered alleging offences punishable under Section 55(g) of the Kerala Abkari Act. Petitioner was arrested on 13.4.2020 and he is in custody.

3. The prosecution case is that on 13.4.2020 at 7 pm. the petitioner was found in possession of 40 liters of wash on the backside of his house at 'Kallaram' and thus the petitioner committed the offence alleged.

4. The counsel for the petitioner submitted that the petitioner is in custody from 13.4.2020 onwards. Moreover, he also submitted that the contraband is not seized from his physical possession and it is seized from the public place.

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

6. After hearing both sides, I think that the bail application can be allowed. The petitioner is in custody from 13.4.2020 onwards. It is true that the contraband seized is not from his physical possession. It is a matter to be proved before the trial court. At this stage, I think that the 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 **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 they 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 they are going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioner and shall ensure that the petitioner do 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 to law, even though the bail is granted by this Court.

**P.V.KUNHIKRISHNAN  
JUDGE**

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