

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 11TH DAY OF MAY, 2020 / 21ST VAISAKHA, 1942

B.A.No. 2649 /2020

(CRIME NO. 81 OF 2020 OF SULTHAN BATHERI EXCISE RANGE OFFICE, WAYANADU DISTRICT)

Petitioner/ Accused :

Anil Kumar P.A , s/o. Arjunan, Puthanveetil house, , Marakkadavu, Padichira – Village, Sulthan Bathery, Wayanadu- District. PIN-673579.

By Adv. Rakesh Roshan K.

Respondent/ Complainant:

State of Kerala, (in Crime No. 81 of 2020 of Sulthan Batheri Excise Range Office, Wayanadu District)
represented by Prosecutor, High court of Kerala,
Ernakulam-31

SRI. AJITH MURALI , PP

SRI. SANTHOSH PETER SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A.No.2649 of 2020

Dated this the 11th day of May, 2020

O R D E R

This Bail Application filed under Section 438 of Criminal Procedure Code (Cr.P.C) was heard through Video Conference.

2. Petitioner is the accused in Crime No.81 of 2020 of Sulthan Bathery Excise Range registered alleging offence punishable under Section 55(g) of the Abkari Act.

3.The prosecution case is that 80 liters of wash is seized from the premises of the petitioner and the petitioner committed offence under Section 55(g) of the Abkari Act.

4. The counsel for the petitioner submitted that, there is some manipulation in the search list and originally nothing was seized and something is added in the search list to show that 80 liters of arrack is seized from the premises of the petitioner. The counsel for the petitioner also submitted that the petitioner is laid up with a back pain and his condition also may be

considered while considering the bail application.

5.The learned Public Prosecutor opposed the bail application and submitted that, huge quantity of wash is seized from the custody of the petitioner and the extra ordinary jurisdiction under Section 438 of the CrPC may not be invoked in this case.

6. After hearing both sides, I cannot entertain this bail application. Section 41 A of the Abkari Act says that, if the learned Public Prosecutor oppose the bail application in Abkari matter, the court can grant bail only in certain circumstances. I am not in a position to conclude at this stage that the petitioner has not committed the offence and he will not commit similar offence in future. I cannot decide the correctness of the search list while considering the bail application under Section 438 of the Cr.P.C. In these circumstances, I think, I am not in a position to entertain this bail application.

7. Moreover, the jurisdiction to grant bail under Sec.438 Cr.P.C has to be exercised on the well settled principles laid

down by the Hon'ble Supreme Court in **Chidambaram P v Directorate of Enforcement (AIR 2019 SC 4198)**. The anticipatory bail is not to be granted as a matter of rule and it has to be granted only when court is convinced that exceptional circumstances exists to resort to the extraordinary jurisdiction.

8. It is true that, there is no hard and fast rule regarding grant or refusal to grant anticipatory 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 under Sec.438 Cr.P.C. Hence this Bail Application is dismissed.

P.V.KUNHIKRISHNAN, JUDGE

YKB