

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 13TH DAY OF MAY 2020 / 23RD VAISAKHA, 1942

BA NO.2672 OF 2020

(Crime No. 63/2020 of Sasthamcotta Excise Range, Kollam District)

**Petitioner/Applicant/ Sole Accused:-**

Arjunan aged 40 years, S/o. Krishnankutty residing at Arjuna Bhavan,  
Aithottuva- Murry, West Kallada, Kunnathoor Taluk, Kollan District - 691501  
(Sole Accused)

By Adv.S. SREEKUMAR (KOLLAM) & RAJ CAROLIN V.

**Respondents/Respondents/ Complainants**

1. The State of Kerala represented by the Public Prosecutor,  
High Court of Kerala-682 031.
2. The Preventive Officer, Sasthamcotta Excise Range,  
Kollam District - 690521

By P.P. Sri.B.Jayasurya (Sr) & Sri. C.K.Prasad

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 13.05.2020,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J**

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B.A.No.2672 of 2020  
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Dated this the 13<sup>th</sup> day of May, 2020

**O R D E R**

This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the accused in Crime No. 63 of 2020 of Sasthamcotta Excise Range registered alleging offences punishable under Sections 8(1), 8(2) and 55(g) of the Abkari Act.

3.The prosecution case is that the petitioner was found in possession of 4.6 liters of Arrack.

4. The counsel for the petitioner submitted that the petitioner has no criminal antecedents. Moreover, the quantity of illicit liquor alleged to be seized is only 4.6

liters of arrack. He is ready to abide any conditions if this court grant bail to him. He also submitted that the contraband article is not seized from his physical possession. It was seized from a shed which is near to the house of the petitioner. According to the counsel for the petitioner, he has no connection to the alleged contraband seized from that shed.

5. The learned Public Prosecutor opposed the bail application. He submitted that the arrack is a prohibited item and hence this court may not grant anticipatory bail under Section 438 of Criminal Procedure Code

6. After hearing both sides, I think I am not in a position to allow this bail application. When, the learned Public Prosecutor opposed the bail application as per Section 41 A of the Abkari Act, there are limitations to the court for granting bail. The contention of the petitioner that he has no connection to the contraband

seized is a matter to be investigated, for which custodial interrogation may be necessary. In such circumstances, I am not in a position to allow this bail application, especially, in the light of the submission of the the learned Public Prosecutor, that there is strong opposition for allowing anticipatory bail.

8. 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.

9. 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**

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