

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.2674 OF 2020

(Crime No 691 /2020 of Keezhvaipur Police Station, Pathanamthitta)

PETITIONERS / ACCUSED

1. Shyam Raj. S, Aged 39 years,
S/o Somorajan,
Puthuparambil House,
Chengaroor P.O, Mallappally
2. Abraham.V.Thomas, Aged 46 Years,
S/o Thomas,
Vadakkera house
Chengaroor PO, Mallappally

By Adv. M R Sasith Panicker

RESPONDENTS

1. State of Kerala,
Represented by the Public Prosecutor,
High Court of Kerala, Ernakulam
PIN: 682031
2. The Sub Inspector of Police,
Keezhvaipur Police Station. Pathamantthitta
PIN: 689587

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.

B.A.No. 2674 of 2020

Dated this the 13th day of May, 2020

ORDER

The petitioners are the accused in Crime No.691/2020 of Keezhvaipur Police Station, Pathanamthitta. The above case is registered against the petitioners alleging offences punishable under Sections 8(1) and 8(2) of Kerala Abkari Act.

2. The prosecution case is that on 18.04.2020 at about 18.45, the 1st respondent is found in possession of 850ml of arrack and 10 liters of koda. Further case of the prosecution is that, the 2nd petitioner is also involved in this case.

3. The learned counsel for the petitioners submitted that, the petitioners have not committed any offence. The learned counsel for the petitioner also submitted that nothing is seized from the possession of the 2nd petitioner.

4. The learned Public Prosecutor oppose the bail

application. The petitioners are engaged in manufacturing of illicit arrack. Therefore, this Court may not entertain an application under Section 438 Cr.P.C.

5. After hearing both sides, I am not in a position to say that the petitioners have not committed the offence and they will not commit similar offences. In such circumstances, I am not in a position to grant bail.

6. 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.

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

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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.

Sd/-

**P.V.KUNHIKRISHNAN,
JUDGE**

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