

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 15TH DAY OF MAY 2020 / 25TH VAISAKHA, 1942

BA NO.2676 OF 2020

(Crime No.100 of 2020 of the Athirappilly Police Station, Pending before the JFCM, Chalakudy, Thrissur District)

Petitioner/ Sole Accused :-

Sivadasan, aged 50, S/o.Paramu, Cheruparambil House, Vetti kuzhi Pachakkad Desom, Athirappilly Village, Chalakudy Taluk, Thrissur District

Adv.Bitto.N.L.

Respondent/State of Kerala:-

1. The State of Kerala, rep. by the public Prosecutor High court of Kerala at Ernakulam.
2. Sub Inspector of Police, Athirappilly Police station, Athirappilly P.O., Thrissur district, 680724

By P.P. Sri.B.JAYASURYA (SR) & C.K.PRASAD

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 15.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J**

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B.A.No.2676 of 2020  
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Dated this the 15<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.100 of 2020 of Athirappilly Police Station. The above case is registered against the petitioner alleging offence punishable under Section 55(g) of the Kerala Abkari Act.

3.The prosecution case is that, on 29.04.2020, at about 9.30 am, the petitioner was found in possession of 30 liters of wash. The petitioner was arrested only on 29.04.2020.

4. The counsel for the petitioner submitted that, the petitioner is in custody from 29.04.2020 onwards and he is ready to abide any conditions, if this Court grant bail to him.

5.The learned Public Prosecutor opposed the bail

application and submitted that huge quantity of wash is seized from the petitioner. Hence, the petitioner may not be granted bail and custodial interrogation is necessary.

6. When the learned Public Prosecutor opposed the bail application, the jurisdiction of this Court to grant bail is restricted as per Section 41A of the Kerala Abkari Act. Moreover, the quantity seized from the petitioner is 30 liters of wash, which is a material used for manufacturing illicit arrack. The petitioner is arrested only on 29.04.2020. In such circumstances, I am not in a position to grant bail to the petitioner. Hence, this bail application is dismissed.

7. Moreover, the jurisdiction to grant bail has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in **Chidambaram P v Central Bureau of Investigation (AIR 2019 SC 5272)**. The apex court held that, the following factors are to be taken into consideration while considering the application for bail.

(i) the nature of accusation and the

severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

It is true that there is no hard and fast rule regarding grant or refusal to grant 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. Hence this Bail Application is dismissed.

**P.V.KUNHIKRISHNAN, JUDGE**

YKB