

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.2677 OF 2020

(Crime No.449 of 2020 of the Koratty Police Station, Pending before the JFCM,
Chalaky, Thrissur District)

Petitioner/ Accused persons 1 to 4:-

1. Sadanandan, aged 49, S/o. Anjakalan, Kavaraparambi House, Palappilly Desom, Koratty Kizhakkumuri Village, Chalaky Taluk, Thrissur District
2. Prathapan, aged 39, S/o.Thankappan, Panankootathil House, Palappilly Desom, Koratty Kizhakkumuri Village, Chalaky Taluk, Thrissur District
3. Mahesh, aged 30, S/o.Ayyappan, Ottungal House, Palappilly Desom, Koratty Kizhakkumuri Village, Chalaky Taluk, Thrissur District
4. Vinoj, aged 29, S/o.Viswambaran, Kannampilly House, Palappilly Desom, Koratty Kizhakkumuri Village, Chalaky 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, Koratty Police station, Koratty P.O., Thrissur district, 680308

BY P.P. SRI.B.JAYASURYA(SR) & SRI.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

B.A.No.2677 of 2020

Dated this the 15th 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. Petitioners are accused Nos. 1 to 4 in Crime No.449 of 2020 of Koratty Police Station. The above case is registered against the petitioners alleging offences punishable under Sections 8(1), 8(2), 55(b) and 55(g) of the Kerala Abkari Act.

3.The prosecution case is that, on 19.04.2020, at about 11 pm, the petitioners were found distilling arrack and the detecting officer seized 4 liters of arrack and 100 liters of wash. The prosecution case is that actually the detecting officer found that the petitioners were engaged in manufacturing of illicit liquor. The petitioners were arrested on 19.04.2020.

4. The counsel for the petitioners submitted that, the petitioners are in custody from 19.04.2020 onwards and no

criminal antecedents are there against the petitioners. The counsel for the petitioners also submitted that, the petitioners are ready to comply any conditions, if this Court grant bail to them.

5.The learned Public Prosecutor opposed the bail application and submitted that, the petitioners were engaged in manufacturing of illicit arrack.

6.When the learned Public Prosecutor opposed the bail application, this Court has limitation in granting bail as per Section 41A of the Kerala Abkari Act. Moreover, it is case were the petitioners were found manufacturing illicit arrack. Huge quantity of wash and 4 liters of illicit arrack also seized from the petitioners. In such circumstances, I am not inclined to grant bail to the petitioners at this stage. 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