

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.2680 OF 2020

(CRIME NO. 279 OF 2020 OF MEENANGADI POLICE STATION, Wayanad
DISTRICT)

Petitioner/2nd Accused

Nikhil.C.S,aged 32 years, S/o Sreevalsan, Muthoorpoyil
House,Krishnagiri,Wayanad

By Adv. Sri. Tony Thomas Inchiparambil

Respondents/complainants:

1. State of Kerala, Represented by the Public Prosecutor,
High Court of Kerala, Ernakulam, Kochi-682 031.
2. The Sub Inspector of Police,
Meenangadi Police Station

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.2680 of 2020

Dated this the 13th 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 2nd accused in Crime No.279 of 2020 of Meenangadi Police Station. The above case is registered against the petitioner and others alleging offence punishable under Section 55(g) of the Abkari Act.

3. The prosecution case is that on 7.4.2020 at 5.30 pm when the police party conducting raid, the petitioner and other accused were found distilling arrack at Pathiramala-Kurisumala and on seeing the police party, the petitioner ran away from the place.

4. The counsel for the petitioner submitted that he is not involved in this case. He is the Assistant Manager of Indus Motors in Sulthan Bathery. He has no connection with the other accused. Moreover, the learned counsel for the petitioner submitted that the

petitioner is ready to abide by any condition, if this Court is granting bail to him.

5. The learned Public Prosecutor opposed the bail application. According to the learned Public Prosecutor there are other accused also. All the accused together committed the above offence and they are absconding. In such circumstances, this Court may not entertain the bail application under Section 438 Cr.P.C.

6. After hearing both sides, I am not in a position to allow this bail application. When the learned Public Prosecutor opposed the bail application, Section 41(A) of the Abkari Act says that the court can grant bail only if the court is convinced that the petitioner has not committed the offence and he will not commit the similar offences in future. From the facts and circumstances of this case, I am not in a position to say at this stage that the petitioner has not committed any offence. In such circumstances, I am not in a position to entertain this bail application.

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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