

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. 2693 OF 2020

(CRIME.NO. 444/2020 OF PUDUKKADU POLICE STATION, THRISSUR RURAL)

APPLICANTS/ACCUSED NOS.2 AND 4:

1. VISHNU @ ITTIKURU, AGED 24 YEARS,
S/O.RAJESH, KOLAKKATTIL HOUSE,
CHITTISSERI.P.O, THRISSUR.
2. ALPHIN, AGED 26 YEARS,
S/O.PYLI, CHULLIKKADAN HOUSE,
PALIYEKKARA, THRISSUR.

BY ADV.SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENTS/COMPLAINANT AND STATE:

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULUM-682031.
2. THE SUB INSPECTOR OF POLICE,
PUDUKKADU POLICE STATION,
PUDUKKADU, THRISSUR - 680301.

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.2693 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 was heard through Video Conference.

2. Petitioners are accused Nos. 2 and 4 in Crime No.444 of 2020 of Puthukkad Police Station. The above case is registered against the petitioners alleging offences punishable under Sections 55(g) of the Abkari Act.

3. The prosecution case is that on 19.04.2020 at about 2.50 p.m., accused Nos. 1 to 4 were found in possession of 35 litres of wash and utensils for preparing illicit arrack.

4. The counsel for the petitioners submitted that the petitioners are ready to abide any conditions, if this Court grant bail. He also submitted that, there is no criminal antecedent against the petitioners.

5.The learned Public Prosecutor opposed the bail application. The Public Prosecutor submitted that, serious offence is committed by the petitioners.

6. After hearing both sides, I think, I am not in a position to allow this Bail Application.

7. When a Public Prosecutor opposed a bail application in a case in which the offence includes the offence under the Abkari Act, there are limitations to the Court to allow the Bail Application. The Court can grant bail, only if the Court is convinced that the accused has not committed that offence and they will not commit similar offences in future. Considering the facts and circumstances of this case, I am not in a position to say that the petitioners has not committed the offences. Hence this Bail Application is dismissed.

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.

SD/-

P.V.KUNHIKRISHNAN, JUDGE