

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 12TH DAY OF MAY 2020 / 22ND VAISAKHA, 1942

BA NO.2697 OF 2020

(CRIME NO.722 OF 2020 OF THE KORATTY POLICE STATION, PENDING
BEFORE THE JFCM, CHALAKUDY, THRISSUR DISTRICT)

PETITIONER/ SOLE ACCUSED :-

SANTHOSH,
AGED 37, S/O.PANKAJAKSHAN,
THOTTATHIL HOUSE, KONOOR DESOM,
MURINGOOR THEKKUMURI VILLAGE,
CHALAKUDY TALUK, THRISSUR DISTRICT

BY 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.AJITH MURALI & SANTHOSH PETER(SR)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 12.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.2697 of 2020

Dated this the 12th 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.722 of 2020 of Koratty Police Station. The above case is registered against the petitioner, alleging offences punishable under Sections 8(1), (2) and 55 (g) of the Kerala Abkari Act. Petitioner was arrested on 26.04.2020 and he is in custody.

3.The prosecution case is that on 26.04.2020, at about 7.00 p.m., the petitioner was found in possession of 3 litres of illicit arrack in his hand and when his house was searched, 3.5 litres of arrack was also seized. It is also alleged that the utensils for manufacturing illicit

arrack was also seized.

4. The counsel for the petitioner submitted that the petitioner is in custody from 26.04.2020 and he has no criminal antecedent.

5. The learned Public Prosecutor submitted that it is true that the petitioner has no criminal antecedent. The Public Prosecutor also submitted that, if this Court granting bail, stringent conditions may be imposed.

6. After hearing both sides, I think this Bail Application can be allowed. The petitioner was arrested on 26.04.2020. The contraband seized from the physical possession of the petitioner is only 3 litres. Considering the facts and circumstances of the case and considering the submissions of the Public Prosecutor, I think this Bail Application can be allowed.

7. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the Hon'ble

Supreme Court in **Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition(C) No.1 of 2020)** and a Full Bench of this Court in **W.P(C)No.9400 of 2020** issued various salutary directions for minimizing the number of inmates inside prisons.

8. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in **Chidambaram. P v Directorate of Enforcement (2019 (16) SCALE 870)**, after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

9. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The Superintendent of Jail concerned where the petitioner is incarcerated is directed to release the petitioner on bail on executing a self bond ensuring that he will appear before the Court concerned as and when required, if he is not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioner as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone number and the address at which the petitioner would be residing after his/their release.

3. The Superintendent of Jail concerned, immediately after release of

the petitioner will forthwith forward the bail bond obtained from the petitioner to the jurisdictional Court.

4. The petitioner immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish his phone number and the place where he is going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioner and shall ensure that the petitioner do not violate the terms of the undertaking.

5. The petitioner shall appear before the Investigating Officer as and when required. The petitioner shall co-operate with the investigation and shall not

threaten or attempt to influence the witnesses or tamper with the evidence.

6. The petitioner shall within one week from the commencement of the functioning of the jurisdictional court, if the court is not functioning at present, execute a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

7. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing and other directions in the wake of declared lock-down.

8. If any of the above conditions are violated by the petitioner, the

jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

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