

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. 2699 OF 2020

(Crime No.722/2020 of Kattakkada Police Station, Thiruvananthapuram)

PETITIONERS/ ACCUSED NOS 1-2

1. Liji Sasi @ Joby, aged 31yrs, S/o Sasi, Leena Bhavan, Karuvila, Muthiyavila, Amachal Muri, Kulathummal Village.
2. Poorna Prakash @ Prakash, aged 37 yrs, S/o Gopalakrishnan, Sreevalsam Veedu, Prathibha Nagar, Muppathadam, Binanipuram, Aluva, Ernakulam District.

By Adv. M R Sasith Panicker

RESPONDENTS/STATE

1. State of Kerala,  
Represented by the Public Prosecutor,  
High Court of Kerala, Ernakulam. Pin 682031
2. The Sub Inspector,  
Kattakkada Police Station,  
Thiruvananthapuram. Pin 695572

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**

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B.A.No. 2699 of 2020  
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Dated this the 12<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. Petitioners are the accused in Crime No. 722 of 2020 of Kattakada 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 Abkari Act. Petitioners were arrested on 26.04.2020 and they are in custody.

3.The prosecution case is that on 26.04.2020 at 10.45 a.m. the accused were found in the possession of 500 ml of arrack and 15 litres of koda along with other articles for the purpose of manufacturing illicit arrack.

4. The counsel for the petitioners submitted that the petitioners are in custody from 26.04.2020. He also submitted

that there is no criminal antecedents against them. He also submitted that, they are ready to abide any conditions, if this Court grant bail to them.

5. The learned Public Prosecutor submitted that the petitioners are involved in manufacturing illicit arrack. He conceded that the quantity of the materials seized is only 15 litres of koda.

6. Considering the facts and circumstances of this case, and considering the date of arrest of the petitioners, and considering the submission 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 petitioners are incarcerated is directed to release the petitioners on bail on executing a self bond ensuring that they will appear before the Court concerned as and when required, if they are not in detention in any other case. It is further directed that the

Superintendent of Jail should get the bail bond from the petitioners 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 petitioners would be residing after their release.

3. The Superintendent of Jail concerned, immediately after release of the petitioners will forthwith forward the bail bond obtained from the petitioners to the jurisdictional Court.

4. The petitioners immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish their phone number and the place where they are going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the

petitioners and shall ensure that the petitioners does not violate the terms of the undertaking.

5. The petitioners shall appear before the Investigating Officer as and when required. The petitioners shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

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

**P.V.KUNHIKRISHNAN, JUDGE**

VPK