

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.2711 OF 2020

(In Crime No.212/2020 of Ollur Police Station, Thrissur)

Petitioner/Accused

Jesphin Joseph aged 22,
S/o Joseph Robinson,
Chirammeel House, Kriachirar Post,
Ollur, Thrissur District-680006

BY ADV.SRI.M.R.VENUGOPAL

Respondents

1. State of Kerala,
Represented by the Public Prosecutor,
High Court of Kerala, Ernakulam-682031
2. The S.I of Police, Ollur Police Station,
Thrissur Distirct - 678554

By P.P. Sri.B.JAYASURYA (SR) & 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.2711 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. Petitioner is the accused in Crime No.212 of 2020 of Ollur Police Station registered alleging offences punishable under Section 20(b)(ii)(B) of the NDPS Act, 1985. Petitioner was arrested on 22.3.2020 and he is in custody.

3.The prosecution case is that about 1.334 Kilograms of Ganja was seized from a Car and 6 gms of Ganja was seized from the bed room of the house of the petitioner. The petitioner was not present at the time of seizure. The seizure was on 6.3.2020. Subsequently,

the arrest was on 22.3.2020.

4. The counsel for the petitioner submitted that the petitioner is not involved in this case. According to him, the Car from where the contraband is seized is not belongs to him and it belongs to his father. According to the counsel for the petitioner, it is a rented car. He submitted that, he surrendered before the Investigating Officer on 22.3.2020. He has no criminal antecedents.

5. The learned Public Prosecutor submitted that the seizure of the contraband is from the Car and it belong to the father of the petitioner. The Public Prosecutor submitted that the petitioner has no criminal antecedents and he was arrested on 22.3.2020. Considering the facts and circumstances of the case, the learned Public Prosecutor submitted that, if this court is granting bail to the petitioner, stringent conditions may be imposed.

6. After considering the contentions of the petitioner and the learned Public Prosecutor, I think this bail application can be allowed because the petitioner is in custody from 22.3.2020 and the quantity seized is intermediary quantity as per the NDPS Act. Admittedly, the contraband is not seized from the physical possession of the petitioner. Of course, this matter is to be decided during the investigation and at the time of trial. Anyway, in the facts and circumstances of the case, 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 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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