

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.2725 OF 2020

C.R NO.16/2020 OF EXCISE RANGE OFFICE, MALA, THRISSUR DISTRICT

PETITIONERS/ACCUSED NOS.1 & 2:

1. ANILKUMAR,
AGED 42 YEARS, S/O. SASIDHARAN NAIR,
THAZHATHUPURATH VEETIL, KOCHU KADAVU DESOM,
THIRUMUKKULAM VILLAGE, CHALAKUDY TALUK.
2. PRASAD,
AGED 51 YEARS, S/O. SANKARAN NAIR,
KAIDATHUKUZHY VEETIL, KOCHU KADAVU DESOM,
THIRUMUKKULAM VILLAGE, CHALAKUDY TALUK.

BY ADVS. SRI.JAISON JOSEPH, AND SRI.A.P. SATHIAN

RESPONDENTS/STATE:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. THE EXCISE RANGE OFFICER,
EXCISE RANGE OFFICE, MALA,
THRISSUR DISTRICT, PIN 680732

BY P.P. SRI.AJITH MURALI & SRI.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. 2725 of 2020

Dated this the 12th day of May, 2020

ORDER

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. The petitioners are the accused Nos.1 & 2 in Crime No. 16/2020 of Excise Range Office, Mala. Above case is registered against the petitioners alleging offences punishable under Sections 8(1) & (2) and 55(g) of the Abkari Act.

3. The prosecution case is that, on 26.4.2020 at 6.15 pm, while the 2nd respondent and party were on patrol duty, they got information that 1st accused was possessing wash for manufacturing arrack near his house, and when they reached there, accused No.1 was found in possession of 55 litres of wash. When he was questioned, accused No.1 told

that he was selling arrack through accused No.2 and accordingly, they went to the house of the 2nd accused. 500 ml of arrack was seized from the possession of the 2nd accused. Hence, the petitioners have committed the aforesaid offences. The petitioners are in custody from 26.4.2020.

4. The counsel for the petitioners submitted that, the petitioners are in custody from 26.4.2020 onwards. There are no criminal antecedents against them.

5. The learned Public Prosecutor submitted that, it is true that there are no criminal antecedents reported against the petitioners. The learned Public Prosecutor submitted that, since the materials for manufacturing illicit liquor are seized from the petitioners, stringent conditions may be imposed, if this Court is granting bail.

6. After hearing both sides and after considering the facts and circumstances of this case, I think, bail can be granted to the petitioners. The petitioners are in custody from 26.4.2020. A small quantity of arrack and about 55 litres wash

are seized from the petitioners. No criminal antecedents are reported against the petitioners. In the light of the facts and circumstances of the case, and based on the submission of the learned 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 **Writ Petition(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 separate self bonds 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 bonds from the petitioners as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned

shall also get the phone numbers and the addresses at which the petitioners would be residing after release.

3. The Superintendent of Jail concerned, immediately after release of the petitioners will forthwith forward the bail bonds 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 numbers 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 do 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 separate bonds 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

MMG