

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. 2728 OF 2020

(CRIME NO.1179/2020 OF KARUNAGAPPALLY POLICE STATION, KOLLAM)

PETITIONER/ ACCUSED

SARATH, AGED 29,  
S/O SASEENDRAN  
KADAVELIL VEETTIL,  
AADINADU THEKKE MURIYIL,  
AADINADU VILLAGE

BY ADV. SRI. M R SASITH PANICKER

RESPONDENTS

1. STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM. PIN 682031
2. THE SUB INSPECTOR,  
KARUNAGAPPALLY POLICE STATION,  
KOLLAM PIN: 690518

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.**

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**B.A. No. 2728 of 2020**  
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**Dated this the 12<sup>th</sup> day of May, 2020**

**ORDER**

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

2. The petitioner is the accused in Crime No. 1179/2020 of Karunagappally Police Station. Above case is registered against the petitioner alleging offences punishable under Section 55(g) of the Abkari Act. The petitioner was arrested on 27.4.2020 and he is in custody.

3. The prosecution case is that, the petitioner was found in possession of 40 litres of koda, which is a material for manufacturing illicit arrack.

4. The counsel for the petitioner submitted that, the petitioner is in custody from 27.4.2020. There are no criminal antecedents against him, and he is ready to abide by any

conditions, if this Court grants bail to him.

5. The learned Public Prosecutor submitted that, there are no criminal antecedents against the petitioner. But, if this Court is granting bail, stringent conditions may be imposed.

6. After hearing both sides and after considering the contentions of the petitioner and the learned Public Prosecutor, I think, this bail application can be allowed. The prosecution case is that, the contraband was seized from the house of the petitioner. But, the petitioner was not present at that time, he was arrested subsequently. Whether the petitioner was in conscious possession of the contraband, is a matter to be proved in trial. Considering the facts and circumstances of the case, and considering the fact that the petitioner is in custody from 27.4.2020 onwards, and also considering 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 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 does 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**

MMG