

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.2734 OF 2020

(Crime No.39/2020 of Excise Range Office, Kottarakkara, Kollam)

PETITIONER/ ACCUSED

Viju, aged 38,
S/o Vijayanandan,
Charumkuzhi veetil, Charumkuzhi Desom,
Chakkuvarakkal Village,
Kottarakkara Taluk

By Adv. M R Sasith Panicker

RESPONDENTS

1. State of Kerala, Represented by the Public Prosecutor, High Court of Kerala, Ernakulam. Pin 682031
2. The Excise Inspector, Excise Range Office, Kottarakkara, Pin 691506

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.2734 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.39 of 2020 of Kottarakkara Excise Range registered alleging offence punishable under Section 58 of the Abkari Act.

3.The prosecution case is that the petitioner was found in possession of 1.600 liters of illicit liquor.

4. The counsel for the petitioner submitted that, he is in custody from 26.03.2020 onwards. He is ready to abide any condition, if this Court granting bail. He also submitted that, the cases alleged to be registered against him are on 2019 and 2017 and simply because he is involved in other case, bail may not be rejected in this case.

5. The learned Public Prosecutor submitted that the

petitioner is in custody from 26.03.2020 onwards. The learned Public Prosecutor also submitted that the petitioner is involved in some other cases. But, the learned Public Prosecutor conceded that, if stringent conditions are imposed, the bail can be granted considering the fact that, only 1.600 liters illicit liquor is seized from the petitioner and he is in custody from 26.03.2020 onwards.

6. Considering the facts and circumstances of the case, I think this bail application can be allowed. The petitioner has a case that, it is a case falsely registered. Of course this is a matter to be decided at the time of trial. The petitioner is in custody from 26.02.2020 onwards and the quantity of the contraband seized is only 1.600 liters of illicit liquor. I think this bail application can be allowed. It is true that the petitioner is involved in some other cases. Simply because the petitioner is involved in some other cases, that is not a ground for dismissal of the bail application.

7. After hearing the counsel for the petitioner and considering the submissions of the learned Public Prosecutor, I

think this bail application can be allowed.

8. 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.

9. 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.

10. 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 lockdown.

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